

# **Positive Economic Analysis of the Constitutions**

## **- Case of Formation of the First Constitution of Pakistan**

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PhD Dissertation

Department of Business Administration and Economics

Philipps-Universität Marburg

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### Pakistan in 1956<sup>1</sup>

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<sup>1</sup>Image taken from the online resource “Story of Pakistan”. The cities marked as Lahore, Peshawar and Quetta are the provincial capitals of Punjab, NWFP and Baluchistan respectively. Karachi was the provincial capital of Sind as well as the capital of Pakistan in 1956. The silver line at the top of West Pakistan demarcates the disputed area, Kashmir.

East Pakistan laid across India and had Dacca/Dhaka as the provincial capital.

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## **Abstract**

This book attempts an economic analysis of the first constitution of Pakistan. We use Rational Choice Model to carry out our research. We propose that the collective choice of constitution-making can be broken down to individual choices aggregated through aggregation mechanisms. Thus we analyse the decision-making at an individual level and take every member of the constitutional assembly as an individual unit. Assuming that the members of constitutional assembly are not participating in the process with altruistic motivations rather they participate because of their own self-interest and to maximize their own utility function. We chose to analyse six constitutional rules and developed hypotheses accordingly. Afterwards four other rules were also discussed because of their importance for the society and the constitutional makers. We used the constitutional choices of system of government, form of government, amendment rules, and human rights as dependent variables and the personal traits of members as independent variables. We find that in case of structure of government the ethnic majorities, linguistic majorities, political and religious majorities favored more the presidential system. While the political and religious minorities as expected favored the parliamentary system. In case of federalism we found out that as expected the older age group members, landowners and foreign educated members favored more the unitary system. Lastly for human rights, we found that that majority (ethnic, linguistic, political and religious) will try to curtail human rights for others. Similarly we assumed that minorities will opt for broader human rights which were corroborated by results in case of political and religious minorities but were not supported by empirical analysis in case of ethnic minority and linguistic minority.

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## **Glossary**

- AIML: All India Muslim League.
- CAD: Constitutional Assembly Debates.
- CAP: 2nd Constitutional assembly of Pakistan also written as Constitutional assembly or simply assembly.
- ECP: Election Commission of Pakistan.
- Jirgas: A group of respectable members of a tribe who take decisions on important issues of the tribe. They can act as electoral college or as jury and their decision is binding on the people of the area. This tradition of Jirgas is prevalent in many areas of Pakistan even now.
- Madrassahs: Religious/Islamic schools.
- MCA: Member Constitutional Assemblies.
- NAP: National Archives of Pakistan.
- NWFP: North Western Frontier Province of Pakistan. Nowadays its name has been changed to Khyber Pukhtoonkhwa.
- PCO: Provisional Constitutional Order.
- PML: Pakistan Muslim League.

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# Chapter I: Introduction

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## 1 Introduction

Constitutions serve as the foundations of the political, social and economic systems of a country. Constitutions have been created, modified and abrogated throughout the world and their dynamics are interesting research areas for students and scholars. Constitutions are studied under various disciplines e.g. political science, law, sociology, constitutional history and economics. Our book researches the first constitution of Pakistan using an Economic Approach. Pakistan is a relatively small, comparatively recent and much overly populated country in the South-East Asia. It has shown volatility and instability to the extent of becoming a *Failed State*. Since the author also belongs to this area, the constitutional choices made in this country are chosen for this research.

The first constitution of any country lays concrete constitutional foundations, which even if abrogated later on, can and do influence the subsequent constitutions or amendments. The first constitution of the French Republic has been an interesting subject for the researchers. Voigt (2009) proposes that the final shape and enforcement of the constitutional rules may also depend on the older constitutional rules previously established in the society. If such an observation is true then the the first constitution of a country may provide the preconstitutional rules which are likely to affect all the subsequent constitutions. In that case any research on a constitution cannot be considered complete unless the precedents have been read thoroughly. This is the main reason that the first constitution of Pakistan is chosen for making an economic analysis. The current constitution of the country (Constitution of 1973) is very similar to the first constitution.

## 2 Constitutional Economics

Almost any phenomenon in life can be discussed using an economic approach<sup>2</sup> including complex inter-personal relationships. This study uses an economic approach to analyze a constitution. Thus attempting to make a contribution in the field of Constitutional Economics. Constitutional Economics (also called constitutional political economy) is a fairly recent strand of research. It differs from the standard

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<sup>2</sup>Gary S Becker, a Nobel Laureate theorises that any human life phenomenon can be explained using an economic approach.

economics which deals with the choices within rules thus assuming the rules to be exogenously given. Constitutional Economics delves deeper and deals with the analysis of how these rules are actually chosen (Voigt, 2011). The difference between choice of rules and choice within rules is the same as difference between policies and constitutions (Brennan, & Hamlin, 2002). The Constitutions provide a broad skeletal framework, while policies stipulate the day to day working.

Like standard economics, there are two broad avenues of this science (Voigt, 2011). The normative branch deals with legitimising the state and its rules by drawing upon the self-interest of the rational individuals. This branch concerns itself with delineating optimal rules i.e. *what should be?* In contrast to this, the positive branch of constitutional economics relates to *what is?* It analyses the constitutions at two levels i.e. the endogenising and modification of rules and secondly the economic effects of these constitutional rules.

Literature regarding the normative branch of the Constitutional Economics is much better developed as compared to the positive branch (Voigt, 2011). On the side of the positive constitutional economics, economic effects of constitutions have been discussed by many scholars, while gap remains where the emergence of the constitutional rules in the first place is economically discussed. In spite of the fact that constitutional rules are necessary for maintaining social order, research in this area is handful. This study contributes to the existing literature by addressing to this lacuna and discusses the emergence of the chosen constitution. It attempts to further the knowledge base of Constitutional Economics by developing generalised testable hypotheses and tests them on a single country i.e. Pakistan.

### **3 Constitution-making**

Constitution-making is a complex process with many different factors shaping up the process. These factors can be grouped into external factors, procedural factors, and individualistic factors.

### **3.1 External Factors**

These relate to the factors which are external to the constitution-making process and also to the individuals who have gathered to create the constitution, but these affect the process nevertheless. For example, a country's internal setbacks like floods, riots, military dictatorship, and economic crisis. These may include other problems like world agencies stipulations, war, and economic sanctions. These factors can influence the time devoted to constitution making process, transparency of decision-making, involvement of public etc.

### **3.2 Procedural/Direct Factors**

These are the factors that directly influence the constitution making process. The examples include the deadlines/time slot allocated for the constitution-making, quorum rules in the constitutional assembly/convention, mode of electing the candidates to the assembly, decision-making rules for collective choice, involvement of third parties (general public, an international agency or delegation, a religious powerful group, judicial body etc) executive controls/veto, the location of assemblies, transparency of proceedings, and so on. Procedural rules are a plethora of influences, each one having its unique importance. They can be studied in great detail and comparisons can always be made, however, neither the external factors nor the procedural factors are points of discussion in this book.

### **3.3 Individualistic factors**

A constitution is a creation of men. These men maybe chosen because of their stellar performances in different fields of life. However when they sit for making a constitution, their minds are not clean slates. They bring their individual personas with them. There are ingrained norms and ethos, beliefs and cultures. This old baggage along with new expectations for the future together, can influence their decision making to a great extent. They have their own preferences and on basis of these preferences they can favor or oppose a constitutional choice. An individual is another factor influencing the constitutional draft (although his weight will depend upon the procedural rules to a great extent).

#### **4 Constitution-Makers and Self Interest**

The constitution-makers or the foundingfathers usually claim that only altruistic motivations shape their decisions on constitutional rules. Skeptics however may disagree and claim self-interest as the motivating force. Charles Beard (1913) suggests that the US Constitution is nothing but a manifestation of economic interests of the foundingfathers. This observation can be extended to other constitutions. Our study also revolves around the same idea and uses rational choice as the economic model. We assume that the constitution-makers are rational individuals, making their cost benefits analysis and choosing an option that maximizes their own utility. If these foundingfathers are assumed as economic agents trying to maximise their own utility by voting in favour or against a constitutional rule, then their choices should be predictable on the basis of preferences of these individuals. If, by rigorous research, one is able to delineate the preferences and economic interests of these individuals then it must become possible to predict their choices in a constitutional setting.

Though this model and similar hypotheses have been used previously (McGuire 1988, Raudla 2009, Heckelman & Dougherty 2009), such a model has never been used to economically analyse the constitution of Pakistan. Pakistan's constitutional history presents a very colourful picture alternating between democracy and dictatorship. The constitution has been abrogated, suspended, held in abeyance and amended many times so it can be interesting to study the formation of this constitution. Though there are certain agencies which research the economic effects of the policies and laws (State Bank of Pakistan, Pakistan Institute of Development Economics), no such agency has undertaken the task of economically researching the Constitution itself. The Supreme Law that governs all the legislation of this country has been an under researched area.

The methodology used for this book will be that of developing a case study. This tries to provide an insight into a single country's constitutional choices. Although the case or event is a single happening i.e. of constitution-making, observations are 80, equalling the number of decision-makers.

Keeping the above-mentioned things in mind, the research objective of this dissertation is to develop an economic analysis of the constitution-making in Pakistan and, to develop a theory regarding the factors which shaped the constitution into what was finally seen. Instead of simply accepting the constitutional choices as exogenously ``given'', this research attempts to delve further and create an economic model regarding the decisions that were taken and the order in which they were done so. Thus trying to identify an inter-dependence in the choices made in the constitution. The objective therefore is to create an economically well researched account of the choices, determining whether they were taken simultaneously or one was a sequel to another. Which interest groups were involved and what were their economic motives, if any? This study also probes whether the constitution was an outcome of a tussle between utility maximising individuals and interest groups or whether it was an earnest effort on the part of the constitutional makers to achieve the ever evasive "General Public Welfare".

Enumerating the basic research questions concisely:

1. What were the economic interests that influenced the constitutional choices seen in Pakistan's constitution?
2. The constitutional choices that are seen, is there any inter-relation? Does one choice lead to another or simply a random approach is taken based upon the interests of the utility maximising individuals.
3. Which interest groups were involved and whose interests seem to be manifested in the constitutional draft?

The rest of the book is structured as follows.

Chapter II relates to the literature review concerning previous developments on the issue of choice of Constitutional Rules. Chapter III and IV relate to Economic Model, implications and hypotheses respectively. These provide the conjectures relating to the factors influencing the choices made in the Pakistani constitution, and also identification of a sequence if there is any. A set of hypothesis is also developed for the interest groups most likely to dominate the decision making on constitutional rules. Chapter V concerns the methodology and data issues. Chapter VI-IX onwards addresses the country as a case study and generate results. Chapter X concludes the research and is the final chapter.



## Chapter II: Constitutions and their Formation

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## **1 ViewPoints on Constitutions**

This chapter provides an overview of the relevant literature. This overview of existing literature provides a background for the subsequent chapters. In order to carry out an economic analysis of the constitution of Pakistan, we first must learn what is a constitution? As we know it is a complex document which influences the society and its innumerable aspects and thus creating a complete definition is quite a difficult task. Nevertheless we look at the opinions of some economists and scholars. We also look at the functions that constitutions mainly serve. It is important to have an idea of some of those functions, because of the enormity of the effort needed to create constitutions. So it seems reasonable to expect that their functionality is understood to some extent. Last but not the least we look at the literature regarding formation of the constitutions. How they are drafted and what are the dynamics involved in their endogenisation?

Although there are many other aspects of studying constitutions but the questions which are important for our research are: what is a constitution?, what are the functions performed by a constitution?, how is it made?. These three questions are the ones for which we give an overview of existing literature.

## **2 What is a Constitution?**

Constitutions are sometimes viewed as complex interlocking structures full of complicated pieces which have to fit against each other in order to work optimally (Elster, 2009). Three forces are most likely to dominate the scenario of constitution formation. These are *Interests, Passions and Reasons*. Normatively speaking, an optimal constitution can emerge only when there is a strong dominance of reasons above the other two influencing factors.

Constitutions can also be considered as contracts (Buchanan, 1975, 50ff). A contract that is based on the expectation that all parties concerned will be better off. On its best, it should be a solution to problems like inequalities in personal preferences and personal capabilities. Buchanan argues that state came into being and constitutional rules emerged because individual costs of producing some specific goods were so high that this function was voluntarily delegated to State. Collective approach makes many

individuals to become better off than before. Naturally if there is no hope for betterment no voluntary contract will emerge especially not a constitution. Individuals earn rights bestowed upon them by constitutional rules and therefore they place a positive value upon constitutions. Thus constitution is a voluntary contract between contracting parties and is of a positive value to all concerned.

Constitution may also be looked as a surety or a guarantee. Most constitutions are created in times of crises and uncertainty. They are formed when countries declare independence, or states need protection from a war, or a nation is freed from a colonial power. Constitution writing is a time where long term rights and duties are established and now that the external threat is somewhat mollified, people start to look for securing benefits for themselves in the times to come. One view can be that when constitution-makers are undertaking the job of constitution-writing they confer to ensure that their rights are not curbed and their long-term benefits are secured. This view is expressed by several authors like Charles Beard (1913), McGuire & Ohsfeldt (1984, 1986) and Raudla (2009).

Later in the book we see that in case of Pakistan, constitution-makers were prominent members of the society having shown their mettle in politics, academia, judiciary or other such departments (see chapter VII for the details of the members). They must have some costs by dropping their primary field of work and sit there through long debates relating to constitution making. One idea could be that constitution-making process helps them pursue their self-interest and that is the reason for their behavior. They are able to manifest their preferences in the constitution and that is the main reason that they join together to draft a constitution. If this is so then we may propose another definition of a constitution; that is, a constitution is a draft of several interests aggregated through aggregation mechanisms.

We propose that constitutions can be assumed as mosaics of rights and duties established by tussle of individuals who are trying to maximize their own utility. It's in every man's interest to secure his rights. To perform one's duties may not be that interesting but bargaining and factionalism would where generate some rights; will automatically bring in some unavoidable duties. Desire to have rights and the security of these rights is the desire behind writing down a constitution. That is the reason that

most constitutional assemblies try to take representation from all the major groups of society. In case of USA and India these major group were states, and in case of Pakistan, the provinces. Including different factions of the society in the process generates bargaining and finally decisions on the constitutional rules.

### **3      Functionality of Constitutions**

As we see above that constitutions are viewed differently by different scholars, similarly their functionality is also subject to different interpretations.

Elster and Slagstad (1988, 3) state two functions which constitutions serve, the first; protection of individual rights and second; to act as a constraint against political changes brought about by the whims of the majority (This is done in several ways e.g. by declaring certain acts as unconstitutional, making constitutional change a difficult task etc). Both these functions protect the citizens and bring longevity and stability to the constitutions. This is imperative because constitutions in turn bring stability in the institutions.

Apart from stability, constitutions can sometimes bring in credibility. Promises are made by the state to protect individual rights, promises are also made by people to let the state and its members work peacefully within the boundaries of constitution. The promises made by a country on an international level may also originate from the constitution<sup>3</sup>. They may describe the spheres of action and as long as every pillar of the state is within its constitutional limits the system of the country can be expected to remain stable.

Stability and credibility of constitutions is imperative in the interest group perspective (Elster & Slagstad, 1988, 9). The interest groups will also seek for stable constitutions once they have established their position in the current situation. Once a constitutional position is established as a result of bargaining, interest groups will be interested in a stable and strong constitution. This will bring stability and longevity to their current

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<sup>3</sup> For example, Article 31 of constitution of Cambodia stipulates that UN charter for Human Rights will be respected in the country (Constitution of Cambodia, Chapter 3).

position. What ever benefits these interest groups have secured, they will be interested to make sure that they can accrue these benefits in the times to come as well. In such a case they will depend on the constitution to bring stability to their position. In this way, constitution helps to avoid dead weight losses arising from bargaining and factionalism in the future assemblies.

There is also an issue of an optimal criterion that must be met in order for the constitution to work most effectively. According to Elster and Slagstad (1988, 9) this criteria relates to several factors e.g. the tasks undertaken by the members other than constitution-making, size and duration of assembly, its location, election procedures for members and secrecy against public. In a perfect world these criteria could have been used for making a perfect constitution, however in reality it is very difficult to create and implement such criteria.

Buchanan divides the collective decision making into two categories according to functions that they serve (Buchanan, 1977, 250) i.e. constitutional level of collective decision making and operational level of collective decision making. Former relates to choosing of the decision rules and the latter relates to the actions and decisions within the constitutional rules. The constitutional level of decision making establishes the rights and claims of persons, groups and state. Thus introducing a legal/political arrangement. On the other hand operational level of decision making relates to decision made by people or state within the limits/constraints set forth by the first level of decision making process (Buchanan, 1977, 289).

Another classification of constitutional rules according to their functionality is put forward by Sunstein. He differentiates them as structural provisions and rights provisions (Elster & Slagstad, 1988, 327). Structural provisions relate to making sure that government will act for the welfare of public at large and will try to avoid factional tyranny and self-interested behaviour. Whereas rights provisions relate to individual rights e.g. freedom of speech and right to vote etc.

McGuire (1987) gives yet another distinction in constitutional rules. This distinction is related to the function that a rule serves. He calls them interest-specific provisions and non-interest specific (general provisions) (McGuire, 1987). In most constitutions,

there are some general rules which stipulate the working of government's systems and some specific rules pertaining to rights of some societal groups. The examples of the general provisions can be the number of houses of the government, electoral laws, amendment rules etc, while the examples for specific rules include subsidies to a specific state, and central/state lists etc.

Functionality of the constitutions cannot be reduced to one dimension or to another. As more and more research is being done on economic effects of the constitutions, more functions of the constitutions are coming to the forefront. Constitutions are multi-dimensional and encompass all spheres of the society. In the self-interest approach constitutions maybe taken as the structures that protect not only the rights but also self-interests of the people. Once an interest group has established a position constitutions serve to provide longevity and protection to their position.

#### **4 Formation of a Constitution**

First and foremost question that comes up while forming a constitution is what to include in a constitution. It must be noted that constitutions are a mode of distributing public goods (e.g. defence, justice, foreign policy etc) and the society/chosen members must decide which choices should be included in the constitution and which should be left to the choices of administrators.

Buchanan and Tullock (1962, 45-62) give a cost approach to the process of collectivizing activities e.g. deciding upon constitutional rules. They propose that a person will be willing to collectivize an activity if it increases his utility. His individual utility maybe increased at two levels. First level when such a decision will reduce some external costs that others may impose upon him and second level when he will get some benefits from his decision which are normally not available to him through private activity. Individual's calculus for collectivizing an activity depends upon the "net costs", if his share in "net costs" of organising the activity collectively is minimised then he would do so. These net costs are dependent on external costs and decision-making costs (or referred as social-interdependence costs).

Once the decision of collectivizing the activity is made, next comes the question of choosing a decision-making rule in the process of collectivizing things. Here again the cost calculation cycle repeats itself and the cost - benefit analysis of the various alternating rules is done. Only then a specific rule is chosen. The collectivization of any activity results in constraining the individual freedom but people will still choose such an alternative as this generates some positive value in the individuals cost - benefit analysis (Buchanan, 1977, 276).

A Pareto-efficient rule in the eyes of Buchanan is the one which is either unanimously decided/chosen or at least the one which people fail to change collectively (Buchanan, 1977, 34). However the ideal choice will not be the rule of unanimity rather perhaps of simple majority. Any decision making rule less than the unanimity will generate some negative externalities but people will choose a less inclusive rule because of the unacceptable delays and costs involved in unanimity rule (Buchanan, 1977, 283). In such a case every individual would want a rule of unanimity where his vote will always count but practicality will force him to choose a reasonable majoritarian rule.

According to Elster (2007, 214), in the ideal sense, the cost of decision making consists of the *cost of the means of deciding, the cost of the side effects of deciding, the opportunity cost of deciding* i.e. the other things a person could have done with his time and effort if he was not involved in making the decisions. But in reality bargaining, logrolling and unnecessary delaying tactics increase the costs manifold.

Collective decision making is about making a policy choice; every person has a set of beliefs and fundamental preferences and policy preferences. Collective decision making relates to 'aggregating' these individual preferences (Elster, 2007, 402). This aggregation may force/induce some people to transform their choices and yet others may mis-represent their preferences in order to achieve their goal. All this can make collective decision-making a very complex process.

These aggregation mechanisms can be **arguing**, **bargaining** and **voting** (Elster, 2007, 403). Argument may be seen mostly in places where unanimity is required while Bargaining consists of offers and counter offers (termed a substantive and procedural bargaining by Voigt (1999,110) and the final decision is dependent on bargaining

power of the parties. Voting is the third mechanism to make a collective decision. It classically should be free of any coercion but this is not seen in non ideal circumstances. Political decision-making mostly involves all three procedures and bargaining may include logrolling and filibustering and politics of empty chair i.e. using exploiting the rules of quorum (Elster, 2007, 405).

The mechanics surrounding constitution formation are complicated. There are issues relating to the fact that constitution is a manifest of collective decision making. Each individual makes a cost benefit analysis in his own mind, votes accordingly and yet he is unsure if he will get what he voted for. The final outlook of the constitution depends also on procedural rules.

Also it is a fact that there are many provisions for which a constitution-maker may or may not have full and complete knowledge. It is assumed that the Constitution makers are fully informed and completely literate in sense of constitutions. However it may not always be the case and constitutional rules emerge under very precarious conditions (Voigt, 2011). These have many factors influencing their final shape. These factors can be the circumstances at the time of constitution-making, the individuals participating in constitution making and the procedural rules. Another factor which may influence the final shape of the constitution are the existing rules which are already in place in the country (Voigt, 2011).

## **5 Endogenising Constitutions**

As previously said, the research in the field of constitutional economics is rapidly flourishing, knowledge on emergence and endogenization of Constitutional Rules is rather handful (Voigt, 2011).

According to different constitutional economists, there are many factors influencing the minds of the constitutional makers at the time of constitution-making. And these factors as well as the individuals (with their backgrounds) play an important rule in decisions on a constitutional draft.



Most important factor is the existence of a “*Constitutional Attitude*” (Buchanan, 1977, 12). This means that there should be willingness to accept rules which is very important in any society. It is also imperative that the differentiation should be made between the choice of rules and different courses of action under these rules once they are chosen i.e. choice within these rules. This concept is akin to Ackerman’s constitutional moments (Ackermann, 2000, 4ff).

Emergence of constitutional rules is deeply affected by another factor, i.e. the phenomenon of “*Uncertainty*” (Buchanan, 1977, 187-189). Uncertainty of the situation remains a stable assumption in the mind of Buchanan. He posits that constitution or decision makers are unable to guess their own wealth/income status in the post constitutional world. Taking into account, a positive assumption about the thought process of people making the constitutional choices. What ever the person expects in the future, his constitutional decisions maybe affected accordingly. Uncertainty serves to make sure that people involved in collective decision making remain unsure how things will finally turn up so they can’t really pursue their self interests. The individual behaviour under uncertainty arises from the *subjective* feelings that an action may not determine the consequences (Arrow, 1984, 173).

The temporal feature of uncertainty is noteworthy (Brennan & Hamlin, 2002). Since the constitutional decisions are going to affect many time periods, uncertainty is further strengthened because it is difficult to develop conjectures about the future positions of different interest groups (Buchanan, 1998, 6). A genuine constitutional choice will be the one that is permanent or at least quasi permanent. Normatively speaking, above-mentioned uncertainty of person regarding his own role and position in the future periods will help him choose a constitutional alternative that fills the criteria of equity, fairness and efficiency instead of blatant self-interest (Buchanan, 1977, 266-267).

Normatively a related phenomenon is “*Rawlsian’s Veil of Ignorance*” which should be attempted if an optimal constitution is desired (Rawls, 1971, 11). Veil of Ignorance relates to setting up a situation in which no person or group will have advantage over others because of asymmetrical information. Any decisions that will emerge will be fair automatically, as all decision-makers will be in the same position or under same

state of lack of information or *Veil of Ignorance*. In constitution-making scenario this is considered automatic by some scholars because of the fact that constitutions are meant to last over longer time-periods and future positions and standings are harder to speculate (Rawls, 1971, 136-142). However one may argue that demographics, geographical distribution and others such factors may be fairly stable atleast in the near future and so this uncertainty may not be so prevalent.

Charles Beard has done some work in the field of positive constitutional economics. He maintains that all great philosophers like Plato and Aristotle have regarded property as a powerful force behind the political power (Beard, 1945, 46-47). He also states that these philosophers seem to agree that constitutions are a compromise between economic powers in the society. According to Beard most constitutions are manifestations of will of interests groups e.g. nobility, clergy, landowners etc. He tries to explain constitutions of the countries like US, England and Sweden on the basis of this theory in his book *The Economic Basis of Politics*.

Beard (1913, 19-51) in his book *Economic Interpretation of the Constitution of the United States* provides that constitution of United States and history surrounding it can be economically interpreted. He surveys the economic interests in 1787 and also the economic conditions at the time. He gives a non-statistical analysis of the constitution and also gives the broad guidelines for future research in the area. He maintains that the foundingfathers had their own personal and constituency interests to pursue and the constitutional draft is a manifestation of those interests, a statement corroborated by Heckelman & Dougherty (2009). He posits that constitution of US can be economically analysed using the self-interest model.

Furthering the positive approach in Constitutional economics, McGuire & Ohsfeldt (1984) in their paper *Economic Interests and the American Constitution: A Quantitative Rehabilitation of Charles A. Beard* empirically test the Beardian Economic Interpretation of US Constitution. They develop an analysis of the voting patterns at the Philadelphia Constitutional Convention of 1787 and conclude that the voting pattern manifested the economic interests of the members. They also present that economic factors play an important role when constitutional rules were being chosen.

Summing up all the above mentioned discussion, we can answer the initial questions of what is a constitution, what is its function and how it is formed? In our opinion, constitution is a pact of rights and duties established by tussle of utility-maximising individuals. The function that constitution serves is that of protecting the interests of the interest groups which formulated it in the first place. Lastly, we propose that constitution is formed by bargaining and aggregation of preferences of the self-interested constitution-makers.

## Chapter III: An Economic Model of Individual Behavior in a Constitutional Setting

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## **1 The Economic Model of Constitutions**

A constitution is a set of rules chosen by a group of people together. This draft is a result of individual choices aggregated to collectivity, by using different aggregation mechanisms and procedures. This collective decision-making should be reducible to individual decision-making and a single collective choice should be explicable on the basis of several individual choices. Regardless of the mode through which constitution-makers are elected/selected to participate in constitution formation, they are expected by their constituencies or the executive to formulate an optimal constitution. But usually an ideal constitution is not achieved due to many reasons. One of the reasons can be that the people creating the constitution may not always be acting in altruistic ways and may decide what is better for them instead of what is better for others.

Keeping this in mind, one can create an economic model about the behaviour of the constitution-makers when they are drafting the constitution. The basic assumption of this model is that an individual acts in his own self-interest and not in the interest of others. He is considered a rational self-interested decision-maker who chooses an option that maximises his own utility within given preferences and given constraints. So what brings him to stop his normal day to day life and sit in the constitution making assembly? There must be opportunity costs for him to be investing his time in a constitutional assembly. We propose that self-interest brings these constitution makers together and makes them invest time and effort in collective decision making. There could be twofold motives to this: first is to protect his own rights and second is to secure benefits for himself. Since constitution is expected to have a long life so the importance of securing these interests becomes magnified because of the long duration of the constitutional contract.

If constitution is a draft of decisions affected by rational calculations of self-interested individuals then one should be able to predict the constitutional choices on the basis of preferences and interests of these members. One general hypothesis can be that when constitution is being formed the constitution-maker probes every decision with a keen eye at two levels: first he looks at the rule for his personal interests. If he is unable to pinpoint the effects of the decision on his exact present position or his future position,

then either he becomes indifferent or is ready to bargain his vote with the people who feel strongly about that specific rule.

With this background it is assumed that, when the constitution of Pakistan was being drafted, the members of the constitutional assembly did not make decisions altruistically and made decisions which maximised their individual utility. Maximising their utility could be at two levels. They could either secure “personal economic interests” or they could further their “ideological goals”.

**Personal economic interests** can be furthered by voting for the policies that could bring economic benefits for the member, e.g. a member may vote for a subsidy/quota for a minority if he belongs to one. He also may vote for such a constitutional clause if his constituency consists of such a minority. In such a case he would maximise his utility by securing more chance of a successful re-election.

A person also maximises his own utility when he works to promote his ideological goals. The conservative party, green party, socialist party all are examples of ideology oriented membership.

If this is the case (as mentioned above) then their voting behaviour will reflect these thought processes and their interests. This is the idea that lies behind the research of developing an economic picture of members of the constitutional assembly. An economic biography is created so that their personal economic interests as well as personal ideological interests can be outlined therefore identifying the factors influencing the constitutional draft. This will provide answer to research question I.

Some of these identified interests are purely economic while others ideological. Since constitutions are the rules that allocate the distribution of public goods, it can be said that a person who is proposing to put forth the interests of his ideological affiliations is a rational individual who expects to reap some economic benefits once he has secured a good spot for his ideological group. Also, to pursue one’s ideological goals is an economically rational endeavour.

Similarly representation interests can also be seen as directly proportional to the economic advantages that he/his group can claim later on. A representation of today can predict the economic position in future. A limit set on a majority or a constraint or an independent judiciary can be related to the fear that the individual may not think of himself to be in majority all the time so he may like some constraints applied to the majority at a given time.

Normally one would expect the constituency interests to be included in the model, however in case of Pakistan we chose not to include them. There are several reasons for this. First of all a self-interested member will put forth his interest above those of his constituencies. In addition, some of the political leaders had their original constituencies in India. After the partition they got elected on the basis of political party affiliations but nevertheless there were no deep-rooted attachments between the leaders and their constituencies. Policing and monitoring costs were high so agents did not really have to be too cautious of the desires of their constituencies. The literacy rates and the mass communication devices at the time were so debilitated that voters were not informed enough to be able to form an educated opinion. Constituency interests are left out by choice in this economic model because we believe that these played a very minor role if any.

In any constitution one would see two types of constitutional clauses. First would be the clauses relating to general design of constitution. These general clauses are usually present in most constitutions, for example rules regarding head of the state, head of the government or details relating to assemblies/houses of parliament. We may call them general constitutional clauses.

Secondly, there are other clauses that relate to a specific country, which take into account unique demographic or social structures of the society. The constitutional clauses that affect such issues may be called interest-specific clauses as these would relate to the interests of specific groups in the country. The examples would be protecting a group of people against discrimination, providing religious freedom to a minority and so on.

In this study the rules of general constitutional designs are considered and the interest specific rules at the initial moment are left out. Ofcourse in case of interest-specific rules the voting behaviour can be much easily predicted (if the background is known). Therefore there maybe nothing noteworthy in such a research as the voting behaviour can be very easily predicted. Also the interest specific provisions will vary from country to country and may not yield replicable results. That is why they are left out in the sense of hypotheses development and testing but given at the end as general information.

## **2 Rationality in Constitution-Making Settings**

A rational decision-making in the individual choice is different from the decision-making in the collective choice (Buchanan and Tullock, 1962, 35-39). In a market setting an individual makes a rational decision by weighing his alternatives with certainty. In a collective choice (in our case the constitution-making process) this certainty is missing. Despite knowing his choices, individual has no way of knowing the final outcome, because between his choice and the final outcome there are other factors involved, such as the choices made by others and the decision - making rules. The uncertainty surrounding the collective choice process limits the theoretical models of rational choice in collective settings to some extent. Buchanan & Tullock (1962, 37) argue in their book “The Calculus of Consent” that this limitation is overestimated. In a political or collective setting this uncertainty can be reduced by mutual agreements and reciprocal behaviours. Uncertainty can also be reduced by the processes of logrolling and strategic voting when an individual can manipulate a desired outcome according to intensity of his interests (Buchanan & Tullock, 1962, 63-84).

There is also another facet to the uncertainty regarding decisions involving longer spans (e.g. collective choice of constitutions) of time. An individual does not know that in the years to come what could be his position. Whatever the person expects in the future, his constitutional decisions may be affected by those expectations (Buchanan, 1977, 187-189). The individual behaviour under uncertainty may arise from the *subjective* feelings that an action may not determine the consequences



(Arrow, 1984, 173). The temporal feature of uncertainty is noteworthy. This means that uncertainty is not only of the fact that what will be the outcome at the moment but also of the fear that what this outcome will be like in future (Brennan & Hamlin, 2002). Since the constitutional decisions are going to affect many time periods, uncertainty is further strengthened because it is difficult to develop conjectures about the future positions of different interest groups (Buchanan & Congleton, 1988, 6).

In a country with multiple political parties there are always one or two parties which are stronger candidates. These parties are most likely to assume that they will stay in power at most times. Similarly ethnicity in the society is expected to remain stable for a long time to come. People from a populous state will know that the population demography is not likely to change much in the coming few decades. All these expectations can be as subjective as Arrow's subjective uncertainty (1984, 173) but they may affect voting behaviour nonetheless.

It is also possible that a person who has a strong intensity towards his preferences is keen to secure as much benefits for himself as possible in the situation. Constitutions are mostly formed in times of chaos and uncertainty, and a self-interested person would use this uncertainty and chaos to his advantage. It is easy for him to be convinced or to convince his group to join hands to secure their preferences. It could be possible that this chaos forces him to be more sensitive to his own needs and motives.

There is also another aspect of rational decision-making in a collective setting that is of lesser responsibility (Buchanan and Tullock, 1962, 35-39). Lesser responsibility is related to the concept that a person may become somewhat less rational in a collective choice because of the fact that neither he will enjoy the benefits individually nor will he suffer the consequences completely/individually. Sharing of responsibility is said to be lack of responsibility, likewise collective benefits and collective repercussions could make a person somewhat less rational.

### **3 Self-Interest in Constitution-Making Settings**

As scope of governmental and collective action increases as compared to private sphere of action, more people are affected. Governmental budgets increase and instead of a uniform cost and benefits to all individuals of society, differential effects are seen. This is the point where pressure groups get mobilised in the society who aim to receive special benefits for themselves (Buchanan & Tullock, 1962, 63-84). These groups have their own economic interests and they work to achieve their interests, trying to maximise their individual utility.

Self-interested behaviour also relates to the concept of homo-economicus and raises doubts that the people involved in constitutional decision making be willing to invest their time and effort to read and evaluate the constitutional alternatives (Buchanan & Tullock, 1977, 298). And will they also selflessly design and propose changes that are not furthering their own self-interest? Since it is assumed that elected politicians and bureaucrats are motivated less by social good than by their own self interest (Buchanan, 1979, 211). This can be an interesting area for research in the side of positive constitutional economics.

Elster (1993) identifies four types of *Interests* operating in a constitution-making setting. These are Purely Personal Economic interests, Interests relevant to the constituency, Political Party Interest and Political Institutions Interests.

These four types of interests operate simultaneously, and may reinforce each other or cancel each other out, e.g. a strong candidate from a party may like to choose presidential system despite his political party's bent to parliamentary system. This could be because he might expect to become president if his party wins. This would be a case where his personal interests are clashing with those of his party.

On the other hand a member may ask that customs are made a provincial subject because he belongs to the coastal area and is trying to secure some benefits for himself as well as for his constituency. This would be a case where personal economic interests are reinforcing his constituency interests.

Elster's observation can be extended on to several other factors e.g. Personal economic interests can be related to his profession or religion or to his ethnic origins. The same can be discussed under the header of his constituency interests because it is possible that these affiliations secured him votes from his constituency in the first place. One can bring any other aspects in picture however almost all of them can be narrowed down to the four mentioned by Elster.

To develop an idea about how participants view the constitutional rule to maximise their own utility: It is important to note a few things as mentioned by McGuire & Ohsfeldt (1986, 1989).

*Economic and political Conditions* at the time of constitution-making should be understood in depth. They are important because they help to understand why the constitution was needed and what were the expectations of the general public from the constitution. Only then one can go into specifics and understand which were the groups that were most likely to benefit from constitution and how they were able to manipulate different constitutional rules in their favour. Developing an idea of *perception* of economic conditions by these members is also imperative, because only by getting into the shoes of those members, one can understand their preferences and the intensity of those preferences. It is noteworthy to observe how they perceive existing conditions as well as how they perceive the changes brought about by constitution. Another thing to note is the *institutional structure existing prior* to the constitution, since the constitutional rules that are selected are influenced by the pre-constitutional rules (Voigt, 2011).

A detailed look at the above mentioned points will depict a detailed picture of the economic and political conditions as well as the perception of constitutional-makers at the time. This would help to determine the interest groups that in turn will lead to the answer of research question 1 and 3.

Referring back to the interests delineated by Elster (1993), at the time of constitution formation there are always groups in the societies that can be identified if political and economic condition are thoroughly studied as suggested by McGuire & Ohsfeldt (1986, 1989). These groups can be creditors, debtors, investors, labourers,

industrialists, farmers, sea traders, immigrants. All these characteristics contribute to mobilisation of *Purely Personal Economic Interests* or *Constituency Economic Interests*. Similarly party affiliations and institutional affiliations can contribute to *Political Party Interest* or *Political Institutions Interests*.

Any constitution (except for maybe non-democratic constitution) takes some time to get drafted. It may face many hindrances and issues before finally taking the shape that is seen later in history. During this many new developments are seen. Therefore the process tracing is important. The idea is to trace the voting spectrum from one end to another and reflect the processes most probably operating behind the final decision on a vote. Thus providing the answer to the Research Question number 2.

## Chapter IV: Implications of the Model

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## **1 The Designing of Pakistan's Constitution**

A constitution of a country may be in an explicitly written format or in an unwritten, constantly evolving format. But in both cases it gives a fundamental skeleton on which all policy choices are based. A written constitution may take the form of an elaborate document that explains and guides about every detail. A constitution can also just be a policy document that gives only the most important policy guidelines and leaves the intricate details to the executives or the legislatures.

The length of the constitution can vary from very long to very short. Regardless of the length of the constitution, in most cases one would see much similarity in constitutions of the world. Almost all the constitutions of the world provide the detail about the three branches of the government i.e. the executive, judiciary and legislature. These three branches are related to each other as well as independent from each other. This separation of powers/checks and balances model is the hall mark of many constitutions (especially US) (Manning, 2011). These three together form the national government and the details surrounding their formation and working are very important in almost all constitutions.

Another issue that is seen in most constitution is the relationship of the national government with provinces (or the unified administration). This is most often clearly stipulated in the constitutions. This clarity serves to avoid any encroachments on to each others turfs and protects the institutions from each others' excesses.

All the constitutions, in order to prevent rigidity (and paradoxically maintaining it to some extent), provide the amendment rules which ensure that constitutions do not get too out of line with the changing demands of time and society. The amendment rules also make sure that constitutions can not be too easily changed and do not become an easily manipulable document in the government's hands.

In light of the above discussions and the ones stated in the preceding chapter (where we proposed that a constitution can be divided into general clauses and interest specific clauses), we can assume that when a constitution is being drafted it must include rules

relating to general design of the constitution as well as specific provisions relating to certain groups of society.

Constitutional draft when delivering the rules of basic design would first of all provide the answer to a few basic questions. The first and central most problem would be that of **who will run the government?** Most of the countries of the world either have a Prime Minister or a President to run it. Though some countries may have royal families to head the government but Pakistan had no such family. Pakistan was a result of massive political movement, so an obvious head of the state would be an elected individual rather than a queen or a king. So first rule that is analyzed relates to the voting behavior of individuals while deciding the system of government i.e. Pakistan will have a presidential or a parliamentary system?

The next question is how this elected individual will run the government in the country. What will be the **system of the government?** Whether the people will choose a strong center or a federation or a mixture thereof. So the next rule for which voting behavior is analysed is the system of government as well as **number of houses** of the legislative assemblies (as bicameralism is almost always associated with federalism). In case of Pakistan the system of government is even more interesting to read because of its unique geography as we explain later in the coming chapters.

One important issue arising in the basic design of the constitution is of establishing the judicial system. Voigt (2009) says that a strong judiciary can solve the dilemma of a strong state. A strong state protects the property rights but the same strong state can use its strength to attenuate property rights. In such a case the judiciary can solve the problem and can act as a constraint on the government. For a judiciary to perform its function as a constraint on executive its independence is important. The independence of the judiciary relates to long tenure of judges, fixed salaries, random assignments of cases and other factors as identified by Elster (1993).

**Human Rights** are also included in the study, first because of the established economic effects and also because of the fact that after the mutiny of 1857 in Indian Sub-Continent, human rights were badly curbed. So it can be interesting to know about a country that took independence because the people believed that their

fundamental rights were being curbed. Do their politicians give the same rights to their own people? So the next constitutional rule for which voting roll call is assessed is the human rights clause.

Last constitutional rule to be discussed is **amendment's rule**. Amendment rules ensure how the constitution formed today will seem so in future thus providing or withholding stability of the drafted constitution. Since constitutional stability is quite a sought-after constitutional attribute, hypotheses are generated also for amendment rules and then tested for the selected constitution.

## **2 Personal Attributes under Consideration**

For the purposes of this study, the interests of the members of the assembly are divided in two broad groups: economic interests (EI) and ideology interests (II).

**Economic Interests** are defined as those interests which when pursued bring monetary benefits to a person. To identify the economic interests of the members of constitutional assembly of Pakistan several factors (variables) can be taken into account<sup>4</sup> e.g. principal occupation, lands owned, properties owned, credit lent, debt borrowed and others (bank balance). A preliminary reading of the society at that time gives a strong hint that public or private securities were not held by most people rather people used to keep their assets in form of gold (which is very difficult information to be obtained).

**Ideology Interests** are defined as those interests which promote one's own beliefs or ethos. These can relate to any attributes relating to the personal life of a member. For the purpose of the study mostly age, gender, education (local or foreign), religion, political party and institutional affiliations are used. These variables may not seem like a direct influence but they may help in explaining a person's behavior in a certain scenario especially when the behavior is contradictory to the obvious economic interests.

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<sup>4</sup> The data available from the field did not let us use all these variables so the ones available were only taken into account.



It is important to decide what the principal occupation of a person was, because most people would have more than one occupation, e.g. a person can have lands and enjoy their income while pursuing law as a career. For the purpose of this research, only principal occupation is taken and principal occupation will be the one that is most actively pursued by the member and most often documented in literature.

### 3 A Snapshot of Country and Constitutional Assembly in 1956

To carry out an economic analysis of the voting behavior of members in the constitutional assembly, it is important to know the conditions of the society (social, political and economic) at the time of constitution making. This includes the study of about a decade of history of Pakistan from 1946 to 1956. A detailed historical account is provided in chapter VI but for now a short description is given.

Pakistan came into being on 14<sup>th</sup> August 1947. Britain removed its colonial rule from the Indian Subcontinent in August 1947. India and Pakistan separated from each other after gaining independence from British rule. Muslim majority areas were included in Pakistan while Hindu majority areas were included in India. As the pre-dominant religion in Pakistan was Islam and the **religious scholars/ulema** became quite an active interest group. The other prominent interest groups in the society as identified by the historians were, **landlords, business groups**<sup>5</sup> in West Pakistan and **middle class group** in East-Pakistan (Uphoff & Ilchman, 1973, 165-169).

At that time, Pakistan had 5 provinces (states), Sind, Punjab, North Western Frontier Province (N.W.F.P), Baluchistan, Bengal or East Pakistan. (That is known as Bangladesh today). The first four provinces were geographically adjacent, named

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<sup>5</sup> Businessmen in the society were of three kinds, capitalist, money lenders and industrialists. The distinction between the three is quite vague and overlapping but to have an idea of the society conditions it maybe reasonable to mention them a little. Capitalists or business men were those people who invested their money in their own projects or the projects of others. The industrialists were few as industry was very rare. Money lenders were also an interesting group. As there were no banks in the country at that time so this group acted as banks, borrowing and lending money at their desired interest rate. All the business groups overlapped with the landlords as they were the people who had enough money to lend, invest or establish industry.

together as West Pakistan while East Pakistan was quite far. Both wings had India in between and had hostile relations with India. This geography was unique because of the fact that East and West parts were separated by more than a 1000 miles. Not only were there geographical distances, but both wings were different in many other respects e.g. language, culture, customs, climate etc.

A constitutional assembly was created in 1946 which failed to deliver the constitution till 1956. The sitting president dissolved the assembly and recreated a new constitutional assembly (Maluka, 1995, 138ff). The 2<sup>nd</sup> Constitutional assembly of Pakistan was formed on 21<sup>st</sup> June 1955 and was elected by members of provincial assemblies and also by municipalities in certain cities (Karachi and Quetta). There were 80 members, 40 from East Pakistan and 40 from West-Pakistan. To make predictions about the voting behavior of the constitution makers, it is important to have a slight understanding of the mind-sets of those individuals.

Most of the members of constitutional assembly were Muslims who made a strong interest group. Again there were sects like Shia, Sunni, Sayyeds. These sub-groups have been traditionally present in Pakistani society and tend to stick together for ideological reasons.

Professional occupations as gathered from the literature review were as follows: 28 Landowners, 23 lawyers, 14 retired Civil Servants, 7 Businessmen, 8 Ulema/Religious scholars and some were journalists (Uphoff & Ilchman, 1973, 165-169)<sup>6</sup>.

Political party affiliations of the members is also an important consideration. At the time there were a few political parties. Most members represented the coalition of the **Muslim League** (twenty-five members) and the **United Front** of East Pakistan (sixteen members). The opposition was represented by the **Awami League** (the People's League), **Azad Pakistan** (Free Pakistan), **Ganatantri Dal** (Democratic

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<sup>6</sup> This data differs in various books, and the numbers look inconsistent. For sake of initial information we provide here what we learnt from the literature but for sake of empirical analysis we use only the data that we gathered from archives ourselves.

Party), **United Progressive Party**, the **National Congress of Pakistan**, and the **Scheduled Castes Federation** (Ahmad, 1970)<sup>7</sup>.

Linguistically/ethnically the constitutional assembly was divided into many groups. Though Urdu was declared as national language, and English as official language, multiple groups existed in constitutional assembly which bonded with each other because of their language. Major groups seen were Punjabis (people from state of Punjab), Bangla (East Pakistan), Sindhi (people from state of Sindh), Pushto (from state of NWFP) and Urdu (immigrants from India).

Genderwise distribution in the assembly was also interesting because all the members of the assembly were men.

## 4 Conjectures

Based on the above snap shot of assembly a few conjectures are made. In general two points are important to be noted: **British influence** in the constitution and **Islamization** of the constitution.

**British influence** in the constitution would be expected because of the close ties of Pakistan and India with the United Kingdom. Before the British came and made India a colony, the subcontinent was run by the Moghul Kings (Schimmel, 1980, 75) and was naturally not a democratic society. During the British rule India was run according to the acts introduced by the Viceroys. The act of 1935 was later on used in Pakistan as interim constitution (Choudury, 1969, 23). The British influence was prevalent not just because of these acts and their remnants but also because most of the politicians and elite families sent their children to study in the British Kingdom (as later shown by our own data). These people due to their foreign exposure had their own mindset which affected their thinking, and in turn the constitution.

Since **British rules** were time tested and found to be durable as well as economically feasible, so older people are also expected to favour them because of risk aversiveness

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<sup>7</sup> As said earlier this data differs in various books, and the numbers look inconsistent. For sake of initial information we provide here what we learnt from the literature but for sake of empirical analysis we use only the data that we gathered from archives ourselves.

generally prevalent in Pakistani society in this age group. Older people because of lack of social security in general avoid taking risks on their money assets and life (Sinha, 1992) . This risk aversiveness along with the chaos and uncertainty prevailing at the time of constitution-making may lead them to vote for time tested and resilient British constitutional rules. Younger members are expected not to favour British rules because of the anti-British emotions in the younger politicians. In general old aged members, landowners and foreign educated people are expected to follow British systems.

**Islamization** of the constitution would also be expected. The reason is that the subcontinent was divided into two parts in the name of religion. After the British retreat, Hindus assumed that they will be running the country as they were an obvious majority (Jaffrelo, 2004, 9 ff). This assumed status was challenged by the Muslim community because they were a minority in comparison but were in great numbers overall. Due to their unending conflict, the area was finally divided into two parts on religious basis. This gave way to many politicians using the Islam card and the religious sentiments to achieve their own agendas. One could expect that a country which was supposed to have been created on religious grounds would most probably not have a secular constitution. Therefore the constitution would be expected to have a lot of Islamic influence if not totally based on sharia's laws.

Most members would be in general assumed to favour Islamisation of the constitution, and Islamic interest groups are expected to play an important role. Especially Ulema/scholars would manipulate the fellow members in the name of religion (a factor prevalent even today and especially pronounced in those times when independence was gained for Muslim majority areas in the name of the religion). Since most other members were also Muslims so they can be made to act accordingly because of public and peer pressure.

**Land ownership** in Pakistan was interwoven with many social aspects of the society. Landlords or the Zamindari System (Land reforms) was set up by the British to create a strong hold in the country. Law of Permanent Settlement when enacted by the Britishers was endorsed by Lord Bentick in these words:

“A vast body of rich landed proprietors, deeply interested in the continuation of British Dominion, and having complete command over mass of the people”(Kazmi, 2003, 12).

Landlords had always supported the British Government. British government by bestowing vast estates to landlords enjoyed immense support by the common masses. The whole society revolved around the landlord, he was an employer, politician, leader, creditor and even industrialist at the same time (as most industry was somehow relevant to him e.g. sugar industry and cotton industry) (Kazmi, 2003, 12 ff). Thus not many people could standup against the landlord, i.e. the British imperialism.

There were very few people in the society who had their own ancestral land independent of British generosity. The people with British endowed land are more likely to be following the British constitutional rules. Also because many of them were friends with British settlers and with many foreign tours, they had somewhat better understanding of British systems and favoured them to a great extent.

**Education** as an influencing factor is categorised into **foreign educated** and **locally educated**. This distinction is important because of the ideological mindset that these persons will portray. Most of them were educated in Britian rather than in any other country, so they have had exposure and understanding of British constitutional rules. While locally educated people were usually studying in Islamic madrassah/schools which had strong anti-British environment (Zaidi, 2004, 39). Even in non-Islamic modern schools anti-British sentiments were rampant.

Ofcourse all these influences are brought about by specific members in the assembly who are assumed to behave consistently. In a nutshell we assume that, British influence is to be brought about by landowners, old aged members and foreign educated members. While Islamic influence is mostly brought about by Ulema/scholars

#### 4.1 Structure of Government (Presidential vs. Parliamentary)

There are several societies that have worked well with having a presidential form of government (USA) and others are performing quite reasonably under parliamentary form of government (India). Some scholars by using their models on different countries propose that form of government appears to be endogenous to ethnic fractionalization (Aghion, Alesina & Trebbi, 2004). The authors discuss many factors (risk aversion, protection of property rights) but the relevant factor in this study is about the polarization and ethnic variation in society. The authors discuss about *Insulation* of leaders i.e. leaders are more protected against blocking of their legislation because the majority needed to veto is greater than normal. They find that various indices of insulations are positively correlated with measure of fractionalization and polarization (Aghion, Alesina & Trebbi, 2004). More polarized societies tend to have more “insulated” rulers i.e. such constitutional rules are chosen which will lead to a greater required majority that can effectively constrain the leader’s ex-post implementation of legislation. This leads to creation of more dictator regimes. A president is more powerful and *insulated* in presidential system as compared to a prime-minister in parliamentary system. Because a prime-minister has to take into account will and wishes of the cabinet.

Robinson and Torvik (2008) create a positive model of constitutional choice of structure of government. They base their research on two principles, first that minorities are more powerful in parliamentary system because their votes matter more in parliamentary system, and second that a president is more powerful in his government than a prime-minister.

Through their research they show that presidents have more power in their roles, and this can be a reason that most political leaders want to be presidents and not prime ministers. In contrast to their leaders the party members prefer more a prime minister unless their party position is in jeopardy. In such a case they would want to choose a stronger president who will protect the overall party position.

Another important finding of the authors that is useful in our study is that they find out that poor and ethnically polarized societies will have a greater tendency to choose

presidential system (Robinson and Torvik, 2008). When ideological polarisation is at the maximum and budgets are smaller, then the countries tend to choose presidential systems.

Since presidential systems are assumed to hold more power than parliamentary system, it is assumed by some scholars (Voigt & Salzberger, 2002) that members of a political party that is likely to be more powerful in the next elections would favor presidential system rather than parliamentary system.

So in general, one could expect that in Pakistan majorities (ethnic, political, religious, linguistic) would support presidentialism because they will think of their position to be fairly strong<sup>8</sup> while opposite will be the case with minorities. In addition to this a strong leader of a political party e.g. party chairman or secretary, would probably vote for presidentialism in the hope that if his party wins he can be a powerful president.

Religious scholars/ulema are most likely to support parliamentary system because they can mobilize more members in such a system. Locally/madrassahs educated people are most likely to be influenced by the Ulema group and they were in considerable numbers in every party. Such a widespread influence can be more powerful in parliamentary system than in a presidential system where one man holds all power. Therefore ulema are likely to be supporters of parliamentary system.

Women members are likely to vote for parliamentary system because they would have a better standing in such a system. In Pakistan in 1956 no woman would expect to be in a race of being a president (there has not been a woman president in Pakistan till now). While in parliamentary system a woman member can have an important standing in the political party, where she can have a comparatively powerful position.

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<sup>8</sup> At the time of the independence there were predominantly two parties, Congress (mainly Hindus though it had many Muslim members) and Muslim League (for Muslims of the area). Muslim League after playing a strong role in Independence had also a strong presence in constitutional assembly (Jalal, 1994, 35ff).

So women members would probably vote for parliamentary system where they would have a better power position.

The above mentioned discussion maybe summed up as consisting of the following main hypotheses.

1. If a constitution-maker has a strong political presence then he is more likely to support presidentialism.
2. If a constitution-maker belongs to the majority (ethnic, political, religious, linguistic), he will most probably support presidentialism.
3. (In continuation with hypothesis No 2) If a constitution-maker belongs to the minority (ethnic, political, religious, linguistic) then he will most probably support parliamentary system.
4. If a member belongs to religious interest groups or Ulema, then he is likely to vote for parliamentary system.
5. If a member is locally educated, then he is likely to vote for parliamentary system.
6. If a member is in older age group or is a woman, then he/she is likely to vote for parliamentary system.
7. If a member is foreign educated or is a landowner, then he is likely to vote for parliamentary system.

## **4.2 Number of Houses**

Research on bicameralism and uni-cameralism is scarce (Voigt, 2009). Although these have been discussed in relation to different phenomena<sup>9</sup> but endogenising the constitutional rule about number of houses has not been discussed very often and literature seems very scarce (Voigt, 2009). .

Separation of power relates to the the distribution of powers between the three arms of the governments ie legislature, executive and judiciary. This separation can either be very formal and rigid) or the boundaries can be vague. However both types have their own merits and demerits (Campbell, 2004, 1-3). A joint decision system however acts

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<sup>9</sup> decision costs (Buchanan & Tullock, 1962), budget deficits (Heller, 1997) or bargaining and decision-making (Levmore, 1992)



as a constraint on politicians and is considered as favourable for citizens (Voigt, 2009). James Madison, the Father of the US Constitution envisaged the constitution to divide the powers amongst different elements in order to separate the powers as well as to use it as a check and balance system (Madison, 1788). He proposed to divide the legislative authority into sub-parts having different modes of election and having separate mode of action. Bicameralism has been said to be used as a tool for check and balance by causing delay in passing legislation which can be termed both positive and negative (Heller, 1997).

Though rudimentary bi-cameral structure of government was seen in the ancient societies, the glaring example in history is that of the British parliament (Muthoo & Shepsle, 2007). Like most bicameral governments, it consisted of two houses but the election criterion was discriminatory. Only elite lineage and aristocracy as well as upper class gentry were allowed to join the upper house, rightly named as House of Lords. The second house was House of Commons. Even House of Commons allowed only the people who fulfilled a minimum property requirement. US parliament deviated from the British parliament despite being bi-cameral in structure. It divided the representation between the two houses on the basis of federal principles.

Bi-cameralism is considered as a stalling mechanism. Heller (1997) considers that bi-cameralism increases the number of veto players that can block legislation. Two houses of legislature mean more individuals need to agree on a piece of legislation. This therefore increases the number of veto players and also increases the costs of aggregating their preferences. Bi-cameralism then would automatically lead to increase in under the table deals and mobilisation of interest groups. Taking a cue from here, let us assume that the same interest groups were active at the time of constitution-making and thinking what they would have done. One hypothesis could be that these interest groups would like to reduce the veto players. The less the veto players/members of the assembly, less are the costs of influencing their voting behaviour. These interest groups may aspire for uni-cameralism. In the light of this one can say that stronger interest groups (comprising of stronger political party members or the members from ethnic/religious majorities) would vote for uni-cameralism.

On a similar note, the members belonging to the executive (or those who have strong expectation of coming to government soon) may favour uni-cameralism because of the less cumbersome procedure for effective legislation to pass. Members belonging to minorities (ethnic, political, religious, linguistic) would most likely vote for bi-cameralism hoping to cause delays in the legislative process.

Foreign educated people, landowners and older aged group people are likely to support bi-cameralism because of aforementioned reasons. There can be another reason for that; usually both houses have different mode of elections, some members may get elected in the upper house because of giving representation to a certain group of society or to the elites as in House of Lords of the British parliament. In that case, landowners, retired civil servants and women can be easily elected in senate because of the reasons of representation, aristocracy or gender equality. So it is easier to stay in political scene if there are two houses with separate mode of elections. So these groups will most likely support bi-cameralism.

While ulema and locally educated people are likely to oppose it for two reasons, first because of their being anti-British sentiments and also because two houses mean more stalling mechanisms and less manoeuvring of self-interests as mentioned before.

All the above conjectures may be shortened to the following hypotheses.

1. If a member belongs to the stronger political party then he will most probably choose unicameralism and vice versa.
2. If a member is from ethnic/religious majority then he is likely to vote for uni-cameralism and vice versa.
3. If a member is a landowner, retired civil servant or a woman, then he/she is likely to vote for bi-cameralism.
4. If a member belongs to religious interest groups/Ulema or is locally educated, then he is likely to vote for uni-cameralism.
5. If a member is foreign educated, then he is likely to vote for bi-cameralism.

### **4.3 Federalism vs. Unitary form of government**

Buchanan & Congleton (1998, 142-143) argue in the book 'Politics by Principle not Interest' that a central government with majority rule in place can not provide

heterogeneous benefits to different parts of the society without incurring massive decision making costs. The rent seeking behaviour, self interest and coalition compromises result in discrimination.

In contrast to the unitary system the federal system may not be a panacea but it does provide another approach. Federalism is a hierarchical system of government that is highlighted by the division of powers at two levels, ie national and state levels. On one hand, federalism is considered inferior to the unitary system because the decision making cost between different bodies is considerably increased (Buchanan & Congleton, 1998, 142-143), on other hand it is considered a reasonable constitutional design by many scholars (Sproule-Jones, 1975, 42). Since it divides the provision of public goods at two levels i.e. national and constituent levels. It gives the opportunity to read consumer preference signals appropriately because of various access points within and between government authorities. Federalism also provides better chances of internalising any negative inter-dependencies between individuals and organisations.

Voigt (2009) points out the fact that various research is done on the economic effects of choosing a federal structure<sup>10</sup> but the research done about why the countries choose a federal system or a unitary systems is almost non-existent. Voigt proposes that constitutional choice of federalism maybe relevant for those countries that have fragmented societies on the basis of ethnicity, language, or religion. He also thinks that this choice could be relevant to those countries which have been British colonies. Many British colonies (Australia, Canada, India, Malaysia, Nigeria, South Africa, and the United States) show federal system of government unlike most former French colonies. According to him newly formed constitutions (most of Central and Eastern Europe) have chosen a federal structure so age of constitution maybe a relevant phenomenon.

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<sup>10</sup>e.g Blume, Lorenz & Voigt, Stefan (2008) *Federalism and Decentralization – A Critical Survey of Frequently Used Indicators*. Online Resource.

The constitutional choice of the system of government may also be proposed to relate to the income of the states/constituting units. When Pakistan was made it consisted of several Indian states that joined together to form Pakistan (Mahmood, 2000, 2ff). Pakistan was a country which had many different kinds of states, some small, some large and there were differences in incomes generated from these states. This situation can be seen as similar to the differences (of ethnicity, language, or religion) proposed by Voigt (2009). If such was the case then the members from these states would like to have federation so that they can maintain their independence while enjoying the benefits of a central government. It can also be possible that richer and bigger states would not want to let their revenues get into a common pool. They would choose a loose federation or a confederation (having a broader range of provincial subjects) so that their revenues could be used within. So again, it could be said that in Pakistan members belonging to richer states (which were predominantly agricultural) would ask for federal systems while members belonging to poor states would vote against it.

Ulema would not want federalism because one unit will make their interests more central and pervasive, while in case of federalism they will want to bring all the state laws in accordance with their ideology which could become a little more cumbersome.

As mentioned previously where we assumed that older age group, foreign educated people and landlords are likely to support the British systems always. They are not likely supporters of federal system rather they would prefer unitary system just like the British model.

The hypotheses discussed above can be clearly articulated as follows.

1. If a member belongs to a rich state then he will most probably choose federal system and vice-versa.
2. If a member is of older age group, landowner or foreign educated, then he will most probably vote against federal system.
3. If a person belongs to the group of Ulema, he will vote against federal system.

#### **4.4 Judiciary**

Independent judiciary protects the rights of citizens from suppression and ensures that the powers of institutions are not usurped. In the strictly positive sense, an independent judiciary can even be beneficial to the interest groups in the society. Its independence will prolong the life of legislations, interest groups might like to invest in a strong and neutral judiciary (Landes & Posner, 1975).

After the promulgation of the constitutional document which represents an agreement between various stakeholders, the diverging interests do not cease to exist. The people who have not secured a desirable position in the constitutional contract try to pursue their interests by bringing constitutional change. The constitutional change itself may be explicit or implicit (Voigt, 1999). Constitution can be changed explicitly by amendments and implicitly by judicial interpretations and judicial review. If constitutionally judiciary is bestowed with the power of judicial review, its importance in interpreting the constitution is profound (Voigt, 1999). Courts can use the power of judicial review to keep the constitutions stable and to protect it from unconstitutional changes by analysing all laws, legislations and executive actions (Ginsburg & Elkins, 2009).

Ramseyer (1994) says that choice of granting independence to courts depends on the expectations of politicians who try to manipulate this choice according to their interest. If they expect their own party to remain in power, they are less likely to opt for an independent judiciary (Hanssen, 2004). In this case the candidates from stronger political parties are expected lesser to vote for an independent judiciary. Ginsburg (2006) state that independence of judiciary seems to be directly co-related to political uncertainty. If this is true, we should be able to see that the constitution-makers in general (in a country that is in any kind of crisis) should support independent judiciary. Ofcourse it can also be expected that the constitution makers who are from judicial institutions are likely to vote for judicial independence because of their institutional interest.

In general Judicial Independence would be a clause that would probably be supported by most members (except for stronger political party members) because of the

uncertainty surrounding the political process. Since no-one could tell for sure when he or she would be ending up in the minority so judicial independence would be desired by most members in the assembly.

In conclusion we can draw the following hypotheses.

1. If a candidate belongs to a stronger political party then he is expected less to vote for an independent judiciary and vice versa.
2. If a member is related to judicial system (lawyer), then he is likely to vote for higher judicial independence.
3. If there is political uncertainty at the time of constitution making then the neutral members (not from stronger political parties and related to judicial system) will probably vote for greater judicial independence.

#### **4.5 Procedures for Amendments**

Procedure of amendments is stipulated in the constitution to add stability as well as to create adaptability in the times to come. Nevertheless the process of amendments should be stringent, only then one can expect the constitution to last for a long time. It is important that constitution can be changed only with greater majority so that the sitting majorities cannot make changes according to their own whims and wills. Stability of the constitution is relevant to the stability of investments and long term planning in the country (Elster, 1993). Therefore it can be expected that political majority will like to opt for stringent amendment rules because of the uncertainty of their own standing in the future.

Relating again to Landes and Posner (1975), if judiciary can be viewed in interest group perspective, so can be the process of amendments. Interest groups might want to have a stable constitution so that it adds credibility to the promises and gives longevity to the legislations. If such is the case then amendment process should also be made stringent so that the constitutions remain stable. Ideally the majority needed should be more than the majority needed for simple legislation (Elster, 1993).

Regarding a general view on amendments procedure, it can be said that all constitutions would have explicitly stipulated rules for amendments. This would add reasonable stability as well as flexibility to the constitutions.

We expect that constitutional rule regarding amendments would require more than simple majority and would be considerably stringent. The interest groups which would belong to the majorities and are prevalent at the time of constitution, they would opt for stringent amendment rules so that the constitution (which reflects the interests of these members) can stay as desired by them. In the same context the minority members would also want even tougher amendment rules because they would not want their current position to deteriorate further. We expect that in the end the Pakistani constitution would have tough amendment rules and most members would vote for more than simple majority to bring change in the constitution.

Summing up the discussion we don't expect any member to ask for lax amendment rules.

1. If a member belongs to the majority (ethnic, political, linguistic, religious) then he is most likely to vote for stringent amendment rules.
2. If a member belongs to the minority (ethnic, political, linguistic, religious) then he is most likely to vote for **even more** stringent amendment rules.

#### **4.6 Human Rights**

Almost all the constitutions after the US and French Constitutions include a clause of human rights (Elster, 1993). This constitutional clause may not seem to have a direct co-relation with economics but some economists suggest otherwise. According to Blume and Voigt (2004) ensuring observance of human rights lead to certainty in the economy which then leads to economic growth and prosperity. Violations of human rights create uncertainty and lower investments. The authors also provide a broad list of human rights naming them as basic human rights, economic/property rights, civil/political rights, social/ emancipatory rights.

Most of the work done on economic analysis of human rights is done on the *effects of human rights*. It is believed that these have a co-relation with economic prosperity of a

country. If human rights are considered to have such a co-relation then should the constitution makers not consider their importance when drafting the constitutions? Endogenising the constitutional rule of human rights has been discussed by Voigt in relevance to Rawlsian veil of ignorance (Rawls, 1971, 11). He theorises that since the constitution makers are uncertain about their positions after the constitution is promulgated so most interest groups would be interested in maintaining the human rights and in ensuring that they are protected by the constitutions. A constitution protecting the human rights increases the utility for all members of the society since they can act according to their own preferences.

Normatively speaking the basic human rights is an important aspect for overall society's welfare but the positive branch also suggests deeper implications. They can be researched positively in two aspects, the economic effects of human rights and what propels the constitution makers to create strong human rights rules.

One idea could be that ex-colonies may have more public demand to create stronger basic rights since the rights have been curbed for so long that it is possible that former colonies provide broader rules. Another focus of research could be that, as in case of Pakistan, during the colonial rule there were many jobs which were off limits to common people. Also freedom to speak, freedom to have a say in political processes, freedom to assembly was curtailed so it could be possible that constitution makers wanted to grant basic human freedom constitutionally and to protect its violation. Speaking in context of this book, it would be interesting to note this phenomenon.

As far as the personal characteristics are concerned, it is possible that the constitution makers have different preferences according to their own interests. The constitution maker belonging to the majority are less likely to support broader human rights than those who are likely to remain in minority. This majority-minority status can relate to the populous –non populous states, or to the minority religion, or to the dominant political party. In countries with low development, women and less educated people are also likely to support broad human rights.

We expect that:



1. If a member is from weaker political parties, minority groups, or is a woman then he/she is likely to support broader human rights.
2. On a similar note, majorities are expected to try to curtail the Human Rights to some extent.

<b>Constitutional Rule</b>	<b>For</b>	<b>Against</b>
<b>Presidentialism</b>	<ul style="list-style-type: none"> <li>• Majorities</li> <li>• Strong political leaders</li> </ul>	<ul style="list-style-type: none"> <li>• Minorities</li> <li>• Religious ulema</li> <li>• Locally educated</li> <li>• Foreign educated</li> <li>• Old Aged</li> <li>• Women</li> <li>• Landowners</li> </ul>
<b>Bi-Cameralism</b>	<ul style="list-style-type: none"> <li>• Minority</li> <li>• Landowner</li> <li>• Retired civil servant</li> <li>• Woman</li> <li>• Foreign educated</li> </ul>	<ul style="list-style-type: none"> <li>• Majority</li> <li>• Religious ulema</li> </ul>
<b>Federalism</b>	<ul style="list-style-type: none"> <li>• Members from rich states</li> </ul>	<ul style="list-style-type: none"> <li>• older age group</li> <li>• landowner</li> <li>• foreign educated</li> <li>• Religious ulema</li> </ul>
<b>Judicial Independence</b>	<ul style="list-style-type: none"> <li>• Lawyers</li> <li>• Minorities</li> </ul>	<ul style="list-style-type: none"> <li>• Majorities</li> </ul>
<b>Strict Amendment Rules</b>	<ul style="list-style-type: none"> <li>• Majorities</li> <li>• Minorities (even stricter rules)</li> </ul>	
<b>Human Rights</b>	<ul style="list-style-type: none"> <li>• Most members (In theory will support, actual scenario is a different issue)</li> </ul>	

## Chapter V: Data Sources and Methodology

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## 1 Data Sources

Basic data that was required consisted of 3 main documents, an economic biography of all 80 members (that should ideally contain all the required variables), rules and procedures of assembly and thirdly voting roll calls of members (this should depict how a member voted on certain constitutional clauses).

Since this information was not to be found in books and journals, we had to research in archives and historical records. To collect this information, data had to be collected from Pakistan. The main point of contact was National Archives of Pakistan (NAP) which held a great deal of information. NAP is a fairly recent organization. It is a central place where important records are sent in order to be compiled at a single place. When the first constitution was being discussed the capital of Pakistan was Karachi and not Islamabad so all the records were transferred to National Archives later on. Therefore a great deal of information is now found here.

Other institutions which held a reasonable amount of information for this project were National Assembly of Pakistan and Sind Assembly. Other good sources were National Library of Pakistan, Library of Law and Justice, and several national university libraries.

Document relating to *Rules and Procedures* was easy to find and was readily available in a booklet form from National Assembly.

The *economic biographies* were comparatively difficult to gather. A basic document consisting of names was available in the debates which started out the process. Then another archival document with short biographies was available from National Assembly. Later on the author consulted several libraries and biographical institutes to fill out as many variables as possible. During the course of research, the Election Commission of Pakistan (ECP) was contacted as well. It was hoped that ECP would have information on profiles of politicians' especially in relevance to their wealth and asset records but it was told that ECP destroys the data about members every 5 years for the lack of appropriate space to keep all these documents. On some occasions families were also contacted to ask specific information about their relatives. All this

effort yielded considerable amount of data to carry out this research project. The members from East Pakistan were comparatively difficult to research because of the fact that some of them supported the formation of Bangladesh. Their existence in Pakistani history was smoothly eliminated by calling them traitors. However through internet a lot of information was gathered and some through newspapers of that time. Considerable information came through four newspapers of that time namely Pakistan Times, Dawn, Nawai-Waqt and Civil & Military Gazette. The news bulletins from four different radios of that time have been researched as well and much information extracted from thereof.

The *voting roll calls* were unavailable for most of the clauses. We were able to have voting lists for only 14 clauses. It was possible to have an idea about a few members' frame of mind because these members gave press statements about their choices in the constitutional design<sup>11</sup>. Some members spoke in the assembly favoring one choice or another. Author believes that as the proceedings in constitutional assembly were open to public and press, so most probably these persons would have voted as they had said they would vote. Also there were many members of the constitutional assembly, who were neither vocal in press nor in the assembly discussions<sup>12</sup>. But we do believe that these members must have voted according to their party stance. As the voting was not secret balloting<sup>13</sup>, so the political leaders would have the knowledge of how their party members are voting. There were also cases of party members (Firoz Khan Noon, Mozaffar Ali Khan Qizilbash) being expelled from their parties because of not following orders so most probably no member would have gone against the wishes of his party leadership (Nawa-e-Waqt, 24<sup>th</sup> June, 1955). Although these discussions have been read but for hypotheses testing only those voting roll calls have been used which were available in detail.

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<sup>11</sup> Just as a single example: Mr Fazlur Rahman favoured a unitary form of constitution. Though the unitary form of government was not established in the end by the constitution, the honourable member was quite vocal about it (Pakistan Times, 1st Jan 1956, Lahore, Pakistan).

<sup>12</sup> As shown the chapter IX (Table-8), a large majority of members were completely silent in the discussion phases.

<sup>13</sup> As the Rule 30 of the document "Rules of Procedure of the Constituent Assembly of Pakistan" published on 27th July 1955.

General discussions in news and literature mention that several members of the constitutional assembly were not present the day the constitution was finally adopted. Also there is a problem that the constitution was voted upon clause by clause and the discussion was spread over several days (CAD, Jan-March 1956). A complete attendance list of members over all these days is nowhere to be found. Records do not contain such information. So to know exactly which member was present on which day and whether he participated in voting or stayed neutral would have been impossible to know. The author attempted an indirect method and tried to extract record from finance division since the members were paid according to their attendance in assembly, but even they did not have such old data.

Because of all these constraints only limited number of constitutional rules have been then empirically tested. We have in total 14 roll calls available but during the course of research it became obvious that interest specific provisions were more in focus in members' eyes and the constitutional rules of general design were somewhat ignored.

## **2 Methodology**

As mentioned above the data available was very limited and in order to carry out the research with the limited amount of data, a detailed methodology is to be designed. This study will be carried out as a single subject case study which focuses mainly on 3 research questions. It is an economic analysis of a historical event (constitution-making) that has long term implications. Since the approach used to analyse the event is individualistic so logically the first thing to do is to analyse the preferences and interests of all the actors involved.

As the event under analysis can no longer be observed or recreated, the possibility of using many qualitative research data collection methods (observation, focus groups) is no more possible. Therefore, secondary data collection methods will be applied for this study mainly focusing on the study of the records and documents. These documents can be the debates and discussions of the assembly records as well as the official archival documents.

Other sources of use may be the personal documents of the members, or other relevant people (historians, journalists) in that time period. These may include letters; auto-biographies etc. Another important source could be the print media or audio or video records of that time. In short, the sources used will be mostly secondary. When and where possible interviews will be arranged of any member, journalist or relevant person who can provide important information.

First step would be to arrange a list of name of members of constitutional assembly and then to create short biographies of all these members. These would be our *Units* and treating each member as an individual unit in the event will generate a large number of *Observations*. These observations are about 80 i.e. as many as the number of the members of assembly.

One thing worth mentioning came out in initial reading i.e. a constitutional assembly was formed at first soon after the country declared independence and was dissolved because it failed to draft a constitution. Then a second constitution-making body was created that finally delivered the constitution. For purposes to understand the case better, detailed information would be provided to explain why such a measure had to be taken. And what was the interest of the executive who took this step so a thorough process tracing would be done. However for generating results only the second assembly would be considered because the focus is on the roll calls of the selected constitutional rules, therefore detailed backgrounds of only the members in the second assembly would be provided.

A constitution consists of two types of constitutional rules; some are general rules which are usually discussed in all constitutions, while some are specific rules which are only relevant in case of a specific country. These specific rules are based on the problems of society and try to alleviate some issues eg a religious society may want the constitution to be in line with religion, a society filled with discrimination may want to give specific representation to a minority group or minority gender. These kinds of rules will not be uniform all over in the world's constitution, but a choice of a president/prime minister will be in almost all constitutions. They are termed as interest-specific and general constitutional clauses respectively (McGuire, 1987). The interest specific rules are prone to manipulation by interest groups more commonly

than the general rules. For the time being only the endogenising of some general constitutional rules is pondered upon. As many specific and interesting interest specific constitutional rules were seen so they were accommodated in the study along the way.

For now, the roll call on the following constitutional rules is taken into account: These will serve as our dependent variables:

1. Structure of Government (Presidential vs. Parliamentary)
2. Number of Houses
3. Federalism
4. Judicial Independence
5. Procedures of Amendments
6. Human Rights

To know a member's Institutional Interests, we would like to know his education, profession, main sources of income etc. To know this it can also be noted that at the time of his tenure in assembly was he member of a legislature or executive or judiciary etc, thus his *institutional linkages* will be probed. Similarly to know if he is influenced by foreign constitutional models it might be relevant to note if he has been working or studying in foreign universities. To know whether a person is in minority groups it's relevant to note his ethnic, linguistic and religious background. Similarly gender would be noted as women are expected to vote in favour of broad human rights clauses. In the end a person's political party affiliations would be noted. To know his strong political presence it must be seen if he is seen as a party's main political figure or not. Strength of political party can be seen as seats won in the last election, and also by number of votes won. All these are presented in the following table and are used as Independent variables.



## **Independent Variables**

Gender
Religion
Ethnic Origin
Geographical Origin
Political Party
Political Presence
Education
Profession
Institutional Linkage
Language

## Chapter VI: Background Information of Pakistan and the Constitutional Assemblies of Pakistan

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## **1 Background about Pakistan in 1956**

This chapter is a short account of the relevant information about Pakistan in 1956. The background knowledge is important because otherwise reader will not be able to understand the dynamics involved in constitution-making. In Pakistan it will also be impossible to understand the frames of mind of different members unless the reader knows the ethnic, linguistic and other details about the members. In this short introduction, territorial limits, geography, culture and society of the country is provided.

## **2 States of Pakistan in 1956**

Punjab, Sindh, Baluchistan and NWFP (North West Frontier Province) were geographically contiguous Muslim majority provinces which were included in Pakistan and termed as West Pakistan. The people living in these provinces differed from each other in various aspects of cultural and linguistic attributes.

### **2.1 Punjab**

Punjab was a bigger province in British India. It was then divided in 1947 into two parts Indian Punjab and Pakistani Punjab. Muslims came to Pakistan's part and Hindus and Sikhs migrated across to the Indian Territory. Both sides of border speak Punjabi as a mother tongue and Hindi and Urdu (official languages of India and Pakistan) come only as second languages. Ethnically these people are called Punjabis and the language they speak is also called Punjabi. They have a distinct culture and distinct physical features<sup>14</sup>.

In 1955, Punjab was given 21 seats in constitutional assembly (out of 80) including 1 for a non-Muslim member (Khan, 2010, 90). As evident from the number of seats in assembly Punjabis were the majority in West Pakistan. Except for one non-Muslim member, all of them belonged to Muslim League. The non-Muslim member also sided with Muslim League and was one of the "Muslim League associates".

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<sup>14</sup> Online Resource: <http://www.encyclopedia.com> (Encyclopedia of World Cultures, 1996 ,Leaf, Murray)

Most members belonging to Punjab in assembly were either land lords or business elites of their areas (as seen in the table 4 of chapter IX). In Punjab there were huge land areas that belonged to a few renowned families and landlordism was quite prevalent. Many of them had their estates bestowed upon them by British viceroys while others inherited them.

## **2.2 Sind**

Sind is the Southern part of Pakistan. Sindhi is the term used for its people, as well as for their language<sup>15</sup>. They are physically similar to Punjabis but their dressing and culture is quite different. Sindh had much less population both at that time as well as today so five seats were allocated for Sind in the assembly (Khan, 2010, 90). These five seats also included a non-Muslim seat as the population of Hindus was quite significant in Sindh.

## **2.3 NWFP**

NWFP stands for North Western Frontier Province. It was geographically adjacent to Afghanistan. The people of NWFP speak Pushto which is similar to the language spoken in Afghanistan<sup>16</sup>. These people are known as Pathans and they have a distinct physical appearance quite similar to Europeans with fair skins, light eyes and a blondish hue to their hair. Culturally they are distinct from people of other provinces and resemble the people of Afghanistan in many ways. NWFP had been given 4 seats in assembly. All of these seats were won by Muslim League (Khan, 2010, 90). The people from NWFP also represented the linguistic and ethnic minority in the constitutional assembly.

## **2.4 Baluchistan**

Baluchistan is the South-Western part of Pakistan bordering with Iran. The people of this area though belong to various tribes and families, they are generally called

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<sup>15</sup> Online Resource: <http://www.encyclopedia.com> (The Columbia Encyclopedia, 6th ed. , 2011 )

<sup>16</sup> Online Resource: <http://www.encyclopedia.com> (World Encyclopedia, 2005)

Baluchs and their language is called Baluchi<sup>17</sup>. Baluchs are culturally, ethnically and linguistically distinct from all other provinces. Baluchistan is a backward and poverty stricken area of Pakistan though this part is rich with natural resources. It is the largest province of Pakistan area wise and the smallest population wise. It was allocated only one seat in the constitutional assembly (Khan, 2010, 90).

## **2.5 East Pakistan**

East Pakistan was not geographically adjacent to Pakistan rather it was more than 1600 kilometers away. Both wings of Pakistan had Indian territory in between the two parts and communication means between the two wings were very rudimentary (Online Britannica Encyclopedia). All this made the issues between the two parts of Pakistan, more complicated than they already were.

Bengal as a province under British rule had only Calcutta as a developed industrialized city which was also its capital. During the partition, this industrialized city was added to India. The rest of the Bengal that was added to Pakistan was only a “rural slum” (Afzal, 2001, 3) as the historians put it. It had much less GDP and per capita income than West Pakistan.

Bengal/East Pakistan had completely different culture, language and other attributes. Bengali people were short statured and could easily be identified from a group of West Pakistanis. Bengal had a larger population of Hindus who were an important part of the economy. East Pakistan had a total of 40 (50%) seats in the constitutional assembly. Out of these 40, 9 seats were for the non-Muslims as the non-Muslim community way in a greater number in East Pakistan (Khan, 2010, 90).

In 1956, 56 % of population lived in East Pakistan while around 44 % lived in West Pakistan. 4 out of 7 Pakistanis spoke Bengali as first language<sup>18</sup>. Pakistan’s total population was 76 million<sup>19</sup>. Population of East Pakistan was 42 million<sup>20</sup> and West

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<sup>17</sup> Online Resource: <http://www.encyclopedia.com> (Encyclopedia of the Modern Middle East and North Africa ,2004 ,Yavari, Nequin)

<sup>18</sup>Time Magazine (Online Version) *Pakistan, Butchery in Bengal*, Monday, May 31, 1954.

<sup>19</sup>Time Magazine (Online Version) *Pakistan: The Mad Mullahs*. Monday, March 30th 1953.

<sup>20</sup>Time Magazine (Online Version) *Pakistan, Division Affirmed*, Monday, March 29, 1954.

Pakistan had a population of about 34 million<sup>21</sup>. Hindus were 12 million in Pakistan which made around 14% of the population<sup>22</sup>. Most Hindus stayed in East Pakistan and a small number lived in Sindh.

## 2.6 Tribal Areas

The Tribal Areas of Pakistan consist of Pakistan's North Western Borders<sup>23</sup>. These areas are geographically adjacent to Afghanistan and the inhabitants also are closely connected to Afghanistan through culture, language and appearance. These areas consist of seven subdivisions or agencies (North Waziristan, South Waziristan, Orakzai, Kurram, Mahmand, Khyber, Bajour). The government writ was difficult to establish in these areas even in colonial times and is difficult till today. Today these areas come up time and again in the news because of jihadi movements and terror issues.

The state-wise distribution of the seats in the assembly can be summarized in the following table (Khan, 2010, 90):

	States	Population in Percentage	Seats in Constitutional Assembly
East Pakistan	East Pakistan	55%	40
West Pakistan	Punjab	45%	21
	Sindh		5
	NWFP		4
	Baluchistan		1
	Tribal Areas		9

## 3 Interest Groups in the Society

The following major interest groups can be identified through literature:

<sup>21</sup>Time Magazine (Online Version) *Pakistan: Reluctant Dictator*. Monday, April 11 1953.

<sup>22</sup>Time Magazine (Online Version), *Pakistan: Islamic State*. Monday, Nov 16 1953.

<sup>23</sup> The Economist (Online Version), *Pakistan's Tribal Areas: A Wild Frontier*, Sep 18, 2008.

### **3.1 Landlords**

This was the most numerous and the most dominant interest group both in the society and in the assembly (Kazmi, 2003, 12ff). The group was so strong that government did not want to take any steps that could offend the landlords in the assembly<sup>24</sup>.

As mentioned before, the landlord system was created by the British to keep their hold over the common man. After the colonial rule the same support was enjoyed by the sitting governments and this relationship became mutually favourable (Kazmi, 2003, 12).

The zamindari<sup>25</sup> (landlord) system worked in such a way that the landlord was both creditor as well as debtor thus was intricately woven in the social and economic systems (Kazmi, 2003, 13). Since most landlords were pretty affluent they would lend money to the farmers or industrialists and acted as debtors to many. Also the landlord took payments from the farmer and paid revenue to government. Under Agra Tenancy (Amendment) Act sometimes he had to pay the Government dues without realising the rents from tenants and in that case he was forced to borrow money from money lenders which resulted in both groups supporting each other on many issues.

Mian Iftikharuddin, a member of the constituent assembly and a minister of Punjab, once tried to put forth a rehabilitation programme which included taking the lands from landlords and giving them to the refugees coming from India. As expected, his idea was received most negatively and even destroyed his relations with the chief minister (Nawab of Mmadot) and the (Liaquat Ali Khan) (Kazmi, 2003, 320).

### **3.2 Capitalists**

This group emerged within 1930's. Debt was a major problem for peasantry and the credit came from money lending class as well as from other landlords. After Pakistan

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<sup>24</sup> Pakistan's first Prime-Minister Liaquat Ali Khan was also a very strong voice in favour of the landed gentry. His speeches in Uttar Pradesh Legislative Council widely available are supportive of the rights of the Landlords at that time.

<sup>25</sup> Word zamindari comes from word zamin of Urdu, that literally means land. Zamindar would be someone who own lands in literal translation.

came into being, its assets were withheld by India and released much later (Kazmi, 2003, 242). At that time the management of Government was done by money lent by capitalists who gave the money to run the government and had underwritten it in many ways. Therefore the Pre-independence business profit taxes became superfluous in Pakistan. These capitalists instead of paying taxes, gave loans to government which naturally increased their hold in the government.

### **3.3 Industrialists and Businessmen**

This was another powerful interest group in the society and assembly. Since Pakistan was an agricultural country predominantly, the industrialists and the landlords were deeply connected. For example sugar industry was a very important industry since it benefited both the industrialist as well as the landlords (Kazmi, 2003, 19). Similarly textile industry similarly connected both groups. Though the businessmen were very few in the society as well as in the assembly, they still exerted their influence because of deep connections with the landlords.

### **3.4 Religious Leaders**

Religious factors were very important when Pakistan came into being. Like the power of the Church in old Christian society, the Mosque and the religious leaders enjoyed immense importance in the state business of nascent Pakistani society (Kazmi, 2003, 322). Twenty-Two Ulemas (Priests) presented a unified charter of their demands that influenced the constitution through a document called Objective Resolution. It held the importance of Magna Carta in Pakistani constitution. The Objective Resolution was a type of preamble to the Constitution. It was presented in March 1949 (but was existent throughout, even in the current constitution of Pakistan). It was a fundamental document that influenced all the subsequent constitutions. Objectives Resolution was deeply influenced by Islamic ideologies and pressures by this interest groups.

## **4 Interim Constitution of Pakistan**

After the independence from British Dominance, Pakistan and India both had no constitution. In Pakistan, Government of India Act 1935 (created by the British) was



adopted with some modifications (Choudury, 1969, 23). This was named as Pakistan (Provisional) Constitutional Order 1947 (PCO 1947). It is important to know the salient features of the interim constitution because traditionally all the later constitutions of Pakistan were in essence quite similar to the very first interim constitution.

#### **4.1 Federation**

Under the original Government of India Act 1935, the basic idea of the act was to grant provincial autonomy which was recognised as need of the situation<sup>26</sup> (Choudury, 1969, 23). Since India was a country consisting of several different ethnic, linguistic and religious communities, federal system was considered convenient. Foundations of this provincial autonomy can also be traced back to 1857 when the revolt for Indian independence had taken place and the centralised system of governance came up as a nuisance in dealing with the mutineers.

Taking the cue from Indian Independence Act 1935 the first structure of government that was laid in Pakistan was that of a federation. According to this PCO Pakistan was a federation with distribution of powers between Centre and the States (Afzal, 2001, 8-12). The federation consisted of five or more provinces, Sindh, Punjab, NWFP, East Pakistan, Baluchistan and other Indian States which might later on decide to join Pakistan. The federation of nascent Pakistan had Karachi as its capital (Khan, 2009, 50).

#### **4.2 Division of Power**

The legislative powers were divided between Centre and province on the basis of three lists, namely the federal, provincial and concurrent lists (Afzal, 2001, 9). The federal legislature could discuss the matters enumerated in the federal lists while the provincial assemblies could legislate upon the matter prescribed in the provincial lists.

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<sup>26</sup> According to some authors (Choudury, 1969, 23) during the mutiny of 1857, British government realized that a central mode of administration lacked efficiency in case of India and provincial autonomy was granted gradually. The British representatives claimed that it was a part of granting administrative powers to the provinces so that they can manage their own affairs to some extent, but many historians differed in opinion.

Concurrent list was however another matter, which was a discretion of both federal and provincial assemblies. The federal list included the subjects defence, foreign affairs, currency, banking, insurance, import/export, customs duty, income tax, posts and telegraphs, and sales tax (Afzal, 2001, 9 & 10). Provincial lists had mainly the subjects judiciary, police, prisons, local government, education, communications, railways, public health, production, agriculture, land, land tenure, taxes on agricultural income and taxes on mineral rights. The concurrent list had subjects of criminal law, marriage and divorce, wills and successions, transfer of property, trust, contracts, factories, labour, trade unions, and electricity<sup>27</sup>.

The powers of the federal government included the executive control in the provinces through its officers<sup>28</sup> (Afzal, 2001, 10). Federal government had the authority to direct a provincial authority to act in a certain manner if it had the feeling of threat to peace and security of economic life of Pakistan. Provinces had the right to collect and retain taxes on federal estate. Also provinces could take succession duties, stamp duties, terminal taxes, tax on railway freight and fares. They also had fixed shares in federal taxes: i.e. income tax (50%), jute export duty (62.5%) central excise, salt duty and duties on some other items.

### **4.3 Head of the State**

The position of the head of State was noteworthy in PCO 1947 (Khan, 2009 , 50). According to the British India Act, the Governor General was a representative of the Queen and enjoyed immense authority (it was only natural of the colonial power to keep maximum authority in their own hands via representatives). He had executive control as well as control over defence forces and foreign policy. He also enjoyed discretion in judicial matters. When Pakistan came into being these powers of Governor General were reduced. The name of the head of the state remained governor general instead of president but most discretionary powers were limited (made subject

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<sup>27</sup> This amazingly broad list is in essence repeated in the actual constitution of 1956. We take up this topic again in chapter VIII, section 3.

<sup>28</sup> This pattern is quite similar in India and Pakistan. This organization was called Indian Civil Service (ICS) or Central Superior Services. This setup then continued in India and Pakistan as Indian Civil Service and Pakistan Civil Service.

to the parliament and to the advice of ministers). The governor general could declare emergency and assume complete executive control and similarly direct the governors of the provinces to do the same. He was the head of federation and all actions were taken in his name. He could appoint prime ministers and cabinet who held offices in his pleasure.

Mr Mohammad Ali Jinnah was elected as the first Governor General of Pakistan. Since it was Mr Jinnah who was considered the most important personality behind the creation of Pakistan, he continued to enjoy much power even after the reduction of powers enjoyed by the Governor General. This, he enjoyed solely because of the personal charisma and respect enjoyed by him overall in the country and in political scenes. This power that was traditionally enjoyed by the post (both by British Viceroy and Mr Jinnah) fell into the hands of the next Governor General who was responsible for dissolving the first constitutional assembly and creating many political and constitutional fiascos.

#### **4.4 Electoral Rules**

Prescribing the electoral rules, PCO not only retained the system of separate electorates (as was so under British rule) but also extended it to scheduled caste Hindus (Afzal, 2001, 10). This system meant that for non-Muslim seats only non-Muslims can vote and choose their candidate. Similarly PCO extended it to scheduled caste Hindus and the minority could vote only for their own candidates for specific seats. On one hand this system meant that there will always be representatives of the minority in the assembly, on the other hand this system segregated the minorities a little bit from the main stream of electoral processes.

### **5 First Constitutional Assembly of Pakistan**

Pakistan's first constitutional assembly was created in 1947, which also functioned as the federal legislature (Khan, 2009, 50-53). It had representatives from all the federating states (except tribal areas). The modus of electing the candidates was chosen differently for different provinces for no obvious reasons. For provinces of Sindh and N.W.F.P members were elected on the basis of elections of July 1946 (the

most recent election before partition). These elections were recently conducted and the members were elected through separate electorates, thus they were accepted in the constituent assembly without any further objections.

For East Pakistan and Punjab fresh elections were held and the provincial assemblies were formed. These assemblies then chose amongst themselves their representatives for the constituent assembly.

For Baluchistan, local municipality and jirga performed these functions and held new elections. Seats for refugees and princely states<sup>29</sup> were filled by nomination by rulers and subsequent acceptance by the assembly.

Total membership of the assembly at the start was 69 and one member represented one million of population (Afzal, 2001, 11). About three years later, ten more seats were added (four seats for refugees and six for princely states). Final distribution (*area wise*) in the assembly was as follows: East Pakistan 44, Punjab 22, Sindh 5, NWFP 3, Baluchistan 1, Bahawalpur States 1, Khairpur States 1, NWFP States 1, Baluchistan States 1. *Political Party wise position* was as follows: Pakistan Muslim league 49/69 and then later 60/79, Pakistan national Congress 11 and Azad Pakistan Party 3.

The working of the assembly on constitution went on but at a very slow pace. On top of all the problems already existing in the new formed country, assembly had an issue with the short attendance of members. Some non-Muslim members migrated to India leaving their seats empty. Most members were simultaneously holding other government offices so they were mostly absent from the sessions because of their executive commitments.

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<sup>29</sup>The adjacent independent states ruled by different princes, who agreed to join Pakistan but were not ready to let go of their individuality completely. These states were given their own representative seats in assembly.

## 5.1 Working of Assembly

The first session of the assembly was held on 10<sup>th</sup> August 1947 in Karachi, four days before independence. 50 out of 69 members attended the session (Afzal, 2001, 12). A Hindu member, Jogendra Nath Mandal enrolled the members present. Mr Mohammad Ali Jinnah was elected as president and Maulvi Tameez-ud-din was elected as deputy-president. The session lasted for 6 days and the committees on *fundamental rights* and *problems of minorities* were made. The constituent assembly did not meet for 18 months after this session because of other issues going on in the country.

The assembly acted both as legislature and constitution maker. As constitution making body, it was independent and chose its procedures. They could amend the provisional constitution and make laws for the country and only simple majority was needed. However Rule 62 of the *Rules of Procedure*<sup>30</sup> demanded that any constitutional bill would be deemed accepted only after it is signed by the president/speaker of the constituent assembly.

The constituent assembly was tiered into committees and subcommittees. Some important ones were named as, Basic Principles Committee, Committee on Fundamental Rights, Committee on Minority Rights, State Negotiating Committee, Tribal Areas Negotiating Committee etc.

*Basic Principles Committee* was the most important committee and was appointed on 12<sup>th</sup> March 1949. It was presided by Maulvi Tameez-ud-din and Liaquat Ali was the vice-president of the committee. It had multiple sub-committees relating to Franchise, Judiciary and Federal Provincial Issues and Distribution of power. The first proposal that it gave, was termed very undemocratic by the media and masses. Executive power was to be exercised by the Head of the state on advice of ministry (Ali Khan, 1996, 205). However the head of state had unlimited powers and he could proclaim emergency and suspend the constitution. Other suggestions that the committee offered were deeply religious, and a strong tilt towards the religious groups could be observed. Urdu was suggested as the national language which was seriously criticised by East

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<sup>30</sup> It was a document retrieved from National Assembly of Pakistan Archives. The manual is not available in published form.

Pakistan. East Pakistan had Bengali as local language and since this wing had more population, they wanted Bengali to be chosen as national language (Kazmi, 2003, 324).

Apart from other issues, assembly had issues relating to quorum and representativeness of members. Some of the members of the constituent assembly /legislature had no constituency in Pakistan. For example, the then Prime minister Liaquat Ali Khan had no constituency in Pakistan rather he had won elections from an Indian district and yet he became the Prime Minister (Kazmi, 2003, 290).

Similarly there were some members of the constituent assembly who did not have permanent resident status of Pakistan. They still maintained their residences in India e.g. Hussain Shaheed Suhrawardy. Ofcourse this fact affected their performance in the assembly. This lacuna was later removed by passing a bill in the constituent assembly on 18<sup>th</sup> May 1948, which closed the membership of the constituent assembly to all non – residents (Kazmi, 2003, 320).

## **5.2 Dissolution of the Assembly**

The governor general of Pakistan enjoyed vast powers. The PCO and the Act of 1935 provided vast powers to the governor general. Though these powers were curtailed to a certain extent after independence but the post remained powerful nonetheless. Secondly the first governor general of Pakistan Mr Jinnah enjoyed more power than written words could give him owing to his strong personal charisma as well as sound political standing. These two factors culminated in setting up a tradition where governor general became much powerful regardless of who was holding the post. When the first constitutional assembly had almost completed a very reasonable draft of the constitution in which most issues were settled, the assembly adjourned to meet again to discuss the constitutional draft sometime later. It was then that the governor general dismissed the constitutional assembly. And the task of constitution-formation broke down once again. It is believed that he took this step because of the bitterness over the reduction of powers of governor general although the stated reason was that parliamentary bickering was the cause for choosing such a strong course of action (Hamid, 2009, 78).

Constitutional assembly's representativeness became an issue when Muslim League suffered a massive defeat in the elections of 1954 in the East Pakistan. Some people believed that since Muslim League got defeated, constitutional assembly did not depict the exact desires of people so maybe it should be restructured. But again as a counter argument, the representativeness issue can be used to question the performance of assembly in the legislative business but its constitution making task can not always be subject to the result of elections. A constitutional assembly may need scholars or political scientists who are not political figures and yet they may produce a fairly durable constitution. But in Pakistan after a long era of British dominance, some sections of the society believed that the constituent assembly must be a representative assembly, the questions of representativeness arose.

It is true that the first constitutional assembly was not performing optimally in its task to make a constitution as about 7 years had passed since 1947. But again the right of governor general to dismiss the assembly was not responded without criticism. Maulvi Tameez-ud-Din the speaker of the dissolved assembly questioned this move in Provincial High Court of Sindh (Khan, 2009, 81). The High Court decided in favor of Mr Tameez-ud-din agreeing that the move by governor general was against the interim constitution and was illegal.

The government appealed against the decision of High Court in the Supreme Court /Federal Court which decided in favor of government. It maintained that governor general could take this action and no law could become operative until it received assent from the governor general. Regardless of the constitutional and legal issues surrounding the issue, it was obvious that constitution of Pakistan was delayed once again for the want of new assembly. This situation exacerbated the already rampant wide chaos and instability in country (Jalal, 1991, 194).

## **6 Delay in Constitution Making**

India and Pakistan both countries had multiple ethnicities, religions and cultures in the society but all these divergent factions ceased to conflict in order to focus on ending the British rule. Hindu and Muslims (two main groups) kept their hands joined till

there was British Empire ruling them. They joined hands on many occasions (1857) till the time they ousted the British dominance (Mahmood, 2000, 5ff). Once it was seen that Britishers are soon to be leaving, Muslims decided to separate themselves from Hindu majority and demanded for their own homeland named Pakistan. Next when Pakistan came into being and people had no Hindu majority to fight they started having issues between them on account of ethnicity, language etc. In the constitutional assembly each faction had the fear that they might get suppressed or they might have to give in to pressure, thus polarization became very strong. It also hindered the business of assembly. Till the time Mr Jinnah was alive these factions were a little subdued but as soon as he died, all this factionalism started to raise head. These issues kept the performance of the assembly at a snailpace. The assembly had two functions (legislature/constitutional) but most historians quote that the performance was not upto the mark on both levels (Mahmood, 2000, 45) (Khan, 2009, 78). The reasons could be many but one quoted often was the absence of the members from the assembly very often (Kamran, 2009). K.K. Aziz (1976, 86-87) mentions that on average, in 7 years, assembly used 33 days per year for legislative business and 16 days per year for constitutional business. So maybe not devoting enough time could also be one of the causes. Another reason mentioned was that the representativeness of assembly had created doubts (which was the officially quoted reason was dissolution of assembly). So many divergent interest groups were present in the assembly and their agreement on any issue was quite painstaking process (as read throughout the time between 1948-1956) which affected its performance (Ahmad, 1970, 136ff).

The polarization is also evident from the fact that initially there were only two parties in the constitutional assembly, Muslim League and Congress which represented Muslims and Hindus respectively. However in the later years from 1948 to 1956, when the constitution was finally made, many parties came into formation.

The only constitutional document that was unanimously agreed by all the Muslim political parties or groups was the **Objective Resolution** (Khan, 2009, 63). It was approved in March 1949. Despite the excitement shown in assembly over its adoption, in actuality it contained nothing but the general principles that were difficult to define and even more difficult to implement in reality. Its vagueness probably allowed it to be passed in the assembly so smoothly. All the Hindu members unanimously voted



against its adoption criticizing the overly religious content of it. However despite the unified opposition of non-Muslim members, Objective Resolution was not only adopted then, but remains a policy statement in later constitutions till today.

There were other unending political issues at the time around the constitution-making which caused an invariable delay. Centre-province relationship was not good and it constituted a delay in the constitution-making. All the provinces had different ethnicity and geographically one wing was so far away from the other that problems were bound to emerge (Kazmi, 2003, 316). West Pakistan had its own doubts, while Sindh had doubts that if Karachi (the most industrially developed city of Pakistan at the time) is made capital then Sindh would suffer as a province (Kazmi, 2003, 318). This delay in selecting a capital for the country caused anxiety and delayed the foreign investors (Kazmi, 2003, 319).

On the other hand, East-Pakistan was the problematic zone since the very beginning. It had much lesser geographical area than the West but much greater population. It was quite backward. Not many Bengalis were inducted in Army and Civil Service by the British. At the time of independence only one Bengali was in the Civil Service (Nurun Nabi Chaudary). Government of Pakistan then increased the quota for Bengalis to 50% in the Civil services along with other steps to bring uniformity between the two zones but problems kept on continuing (Kazmi, 2003, 319).

Industrial development was in a debilitated situation. Pakistan inherited only 14 Cotton mills at the time of independence. Although an industrial policy was created in 1947 but the investment from foreign investors was minimal. Pakistan had not even a single bank at the time of independence however the number rose to 34 commercial banks in 1950 (Kazmi, 2003, 327-329).

All these executive and administrative issues took a lot of time of government and the constitution-making process suffered in consequence. All the constitutional reports submitted by different committees received unwelcoming responses in this chaos and the assassination of then Prime Minister Mr Liaquat Ali Khan created another unforeseen delay. Finally the assembly was dissolved without any progress on constitution except for the Objective's Resolution.

## **7 Second Constitutional Assembly of Pakistan**

The second constitutional assembly (CAP) was formed in 1955. The elections to second constitutional assembly were held on 21<sup>st</sup> June 1955 and 72 members were elected through indirect elections<sup>31</sup>. These elected members belonged to different areas of the country. 40 belonged to East Pakistan and other 32 belonged to West Pakistan. Out of 32 members who were from West Pakistan, 21 were from Punjab, 5 from Sindh, 4 from NWFP, 1 from Karachi (capital), and 1 from Baluchistan<sup>32</sup>. The remaining eight members (of total 80) joined later on, through nominations.

All the 80 members of assembly were distinguished people of their areas. Each one of them was included in the assembly either because of his education, experience, or political standing (to see the qualifications of the members please refer to the next chapter).

The members generally were affluent and respectable members of society belonging to various professions. Professionally most predominant members were lawyers in East Pakistan and landlords in West Pakistan. However there were also civil servants, journalists, doctors and religious scholars etc (table 4 in chapter IX).

The age group predominant was middle age group ranging between 45 to 65. A few were younger popular leaders in their thirties (table 5 in chapter IX).

Religion-wise most members belonged to Islam. Out of 80 members only 11 were non-Muslims. They mostly belonged to East Pakistan. Out of these 11 non Muslim members, only 2 were Christians and all others were Hindus (table 3 in chapter IX).

Muslim League was a major party in the assembly having about 31 members and several associates. Second major party was Awami League that held much power in East Pakistan. Unlike Muslim League which predominantly consisted of landlords and other affluent members of society, Awami League consisted mainly of middle class people. 'Awami' word itself stands for common man. Third major party in assembly

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<sup>31</sup>Dawn, Karachi, 21<sup>st</sup> June 1955.

<sup>32</sup>Dawn, Karachi, 22nd June 1955.

was United Front. It was not a predefined party rather it was a loose alliance of several parties having a common front, as the name suggests (table 2 in chapter IX).

The first constitutional assembly had a few women members, but the second constituent assembly had no woman member.

The first session of assembly was held in Murree on 7<sup>th</sup> July 1955<sup>33</sup>. The first task of the assembly was to validate old laws and also to create rules of procedure for itself. And later on the issue of constitution making was to be taken up. The constitution was drafted by drawing freely on the draft of the old constitutional assembly<sup>34</sup> and later on presented to the assembly for general discussions.

## 7.1 Political Parties in the Constitutional Assembly

**Muslim League** was the strongest party in the constitutional assembly. This party was established in 1906 and was originally named as All India Muslim League. After independence, it was named as Pakistan Muslim League (PML) in 1948. In Pakistan Muslim League commanded the majority for longest span of time (Ahmad, 1970, 136ff). Since Muslim League's reason of creation and existence was to provide a platform for Muslims so after independence it had no specific party manifesto. All it had as a party manifesto was the vague statements already present in Objective Resolutions<sup>35</sup> e.g. protection of fundamental rights, minority rights, ensuring peace etc. After the independence Muslim League became a party of the elites and its membership was mostly held by landlords (especially in West Pakistan). Muslim League enjoyed the power which its members held in an agrarian society of Pakistan. The party won many elections from West Pakistan because of the hold of landlords and was not so successful in East Pakistan because in East Pakistan it did not enjoy

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<sup>33</sup>Dawn, 8<sup>th</sup> July 1955.

<sup>34</sup>CAD: 9<sup>th</sup> Jan 1956 (as admitted by the Law Minister himself in his speech)

<sup>35</sup>Objective Resolutions was the first constitutional report that was unanimously accepted by all factions of society (1949). The reason could also be that Objectives Resolution did not affect any part of society and stipulated only policy directions. It contained provisions that only directed what must ideal constitution do for society e.g. bring peace and tranquility, promote Islam, protect fundamental rights etc. The full text is available as the annex in Constitution of 1973 Pakistan and it's gist is reproduced in the preamble of the current constitution.

this support. In second constitutional assembly, out of 40 seats from East Pakistan Muslim League only won one seat. From West Pakistan however it was in majority.

**United Front** was second largest political party in the assembly. It had 16 members. Since Muslim League was not in complete majority in the national assembly/CAP, it had to create a coalition with someone. United Front with its 16 members and Awami League with its 13 members, both could be candidates for making a coalition to run the government (Ahmad, 1970, 148ff). However because of some issues with Awami League, PML made an alliance with United Front. Before aligning with PML, United Front had joined hands with Awami League in 1953 before the upcoming elections. For the uplift of province of East Pakistan they had made a compromise named 21 point formula<sup>36</sup>. After the elections, United Front joined hands with Muslim League and ran the coalition government (amidst the constant allegations and criticism from Awami League to have forgotten the 21 points and not doing enough for East Pakistan).

United Front itself was nothing but a compromise between several small parties. The main party behind the United Front was **Krishak Sramik Party**. It was founded as Krishak Praja Party 1927, by Mr AK Fazlul Haq (Ahmad, 1970, 148ff). Mr Fazlul Huq was the oldest member of the assembly and had a law degree. He was a seasoned politician who led his party by his magnetic personality. He was known for his canvassing and campaigning abilities and his target group of society was of peasants and farmers. This class had its own problems like indebtedness and of being very down trodden. The party went into oblivion for some time and re-organized itself as Krishak Sramik party in 1953. While Krishak Praja meant “peasant” Krishak Sramik meant “peasants and workers”. The name change was interesting in the sense that it relates to the masses that the party catered. Before partition the province was mostly agrarian so the name of the party related to the peasant. After independence when the province became a little industrialized the party catered both to workers and the farmers. In both cases it is evident that unlike Muslim League it was a party that related itself to middle and lower classes of the society. However its manifesto did not

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<sup>36</sup>The complete text of 21-Point formula can be found in Dawn, Karachi, 20th Dec 1953.

contain any serious provisions how it planned to bring change in the life of a common man of Bengal (Ahmad, 1970, 164). The party stood for establishment of socialism, abolition of landlord system (without giving compensation), nationalism etc.

At the time of constitution-making **Nizam-e-Islam** party was a part of United Front and also of 21 point agreement. This party was very strict against secularism. Word “Nizam” itself means the “system” and this party wanted the Islamic system to prevail in Pakistan. Almost all its members in CAP were educated in local Islamic Madrassahs and belonged to middle or lower middle class in East Pakistan. The party was a strong proponent of Islamic constitution. Since apparently demand for Pakistan was on the basis of the desire to have a separate homeland for Muslim, it is obvious that this party had a strong voice in Assembly. Although very few members of this party were in CAP but it was a part of United Front so it could manipulate the religious fervor prevalent in country since partition.

**Awami League** was an important party in the assembly. It held about 13 seats in the assembly and almost all the members came from East Pakistan. The word Awami itself means belonging to “Awam” that means people or commons. This party had neither big industrialists nor landlords as members, rather middle class common people. The party originated in 1952 from Lahore (West Pakistan) as Jinnah Awami Muslim League. It was established by some younger politicians from East Pakistan and later on it became stronger in East Pakistan as compared to the West. It was later known as Awami League and included the non-Muslims into its memberships. The party consisted of some dissenting leaders of Muslim League who had a conflict over the choice of leadership and party positions (Ahmad, 1970, 163). It was a result of the initiative taken by Mr Hussain Shaheed Suhrawardy who was the leader of opposition in the constitutional assembly in 1956. The main reason for its formation was to oppose the policy lines of Muslim League. But despite that it did not have a manifesto too different from Muslim League. The major ideology difference between the two was that it believed in land reforms and wanted to curtail the landholdings to a certain level. It also had certain demands like complete provincial autonomy, acceptance of Bengali as a national language and a unicameral government that would hold membership on population basis. The party initially tried to establish itself on the national level trying to take up the national issues. But later on it was reduced to a

communal group raising issues relevant only to Bengal and manipulating communal and provincial feelings in the masses. It had charismatic and passionate leaders like Sheikh Mujeeb Rehman who was the main person behind the creation of Bangladesh. With the United Front it had signed the 21-point formula and its members seemed to hold on much of the constitutional debates limited to the demands raised in this formula. Awami League as a party overall, wasn't happy with the constitution and had walked out on the third reading of this constitutional bill.

## **7.2 Rules and procedures**

The assembly created its own rules and procedures which was one of the very first tasks that it undertook.

The assembly sessions were headed by the speaker and in his absence by the deputy speaker<sup>37</sup> (Rules 7-12). Both these persons were elected through simple majority within the assembly. Speaker had the power to call for the assembly meeting and also to adjourn the meeting to a specific date.

Assembly minimum quorum that could constitute a meeting of assembly was 1/3<sup>rd</sup> of total members (Rule-19). The members present would not be ordinarily counted unless any member would point out that the number of members is less than necessary. Only in that case speaker would call out for counting of members and if not found satisfactory then he would adjourn the meeting. It is interesting to note that ruling party had more than 35 members while the minimum quorum necessary to conduct the business was of 27 members.

There were committees in the assembly just like the first constitutional assembly (Rules-63-75). These committees could bring forward motions to steer the discussions to a certain issue. Similarly any member could start a discussion by giving proper notice. Also every one could propose amendments to such a motion. A member could

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<sup>37</sup>“Rules and Procedures of Constitutional Assembly”: A document secured from archives of National Assembly of Pakistan, Islamabad.

join in the discussion after giving notice to the speaker and speak only when permitted to do so (Rule-35 to 39). His time for speech could be curtailed when the speaker wished to do so. Speaker could also tell a member to stop if he thought that his speech is irrelevant or repetitive. No member could speak twice on a certain issue. It can be said that rules were quite strict and could be used by speaker in his own discretion.

Normally the reports on discussion would be available to members only (Rule-41). Only when there were meetings open to public then the reports would be released to press and public. When a bill (e.g constitutional bill) was passed and accepted in the assembly it was officially released in government's magazines. The record of such reports is not available anymore.

The official languages in the assembly were Urdu and English (Rule-29). Later on Bengali was also added as an official language (CAD, 17<sup>th</sup> Jan, 1956).

As far as the constitutional or legislative business was concerned, a bill could be proposed by any member in the assembly (Rules-44 & 45). There had to be three readings of the bill. First would only consist of discussion on general principles of the bill and no one was allowed to go into the specifics (Rule-48). The speaker could use his right to curtail the discussions if he thought a member was going too deep into the bill. After this reading the bill could be channelled for either second reading or to a select committee for further drafting (Rule-49 to 58). It was also possible to send the bill for drawing opinion from public through general referendum. Public had a right of opinion if majority of members decided in favour of a referendum (Rule-47<sup>38</sup>). In the second reading the bill was discussed in depth (Rule-48) and members could propose amendments. In the third reading the bill would be read clause by clause (Rule-59) and finally passed.

According to Rule 30 of the rules and procedures of constitutional assembly, members voted on the bill by *voice*. Once the speaker (chairman) presented the bill for voting,

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<sup>38</sup> An option of referendum was available but was not used despite the opposition's demands, as evident from constitutional assembly debates. The ruling factions emphasized the importance of passing the constitutional bill quickly and the referendum would have delayed it. Due to non-agreement in the assembly over this issue, a referendum never took place for the Constitution of 1956.

members shouted Ayes or Noes. Whatever voice seemed stronger the speaker would accept or reject the motion accordingly.

If there was a doubt or both voices seemed equally strong then members had a right to demand counting of votes (subject to agreement by speaker)<sup>39</sup>. Members supporting Ayes and Noes would rise in their seats turn by turn, the votes would be counted and speaker (Chairman) would announce the decision. This would yield the number of votes and only the numbers will appear in the records of assembly. The names of the members supporting or rejecting the motion will not be named thus providing a little bit of confidentiality (this presented a difficulty in data collection). Since the proceedings were open for public and the newspapers, some names can still be found in the newspapers but complete lists for empirical research purposes is unavailable.

The third option was termed as *division*, if members had still a bit of doubt and disagreement, then they could demand division. Speaker would call out for members to walk towards the right end of the hall or left respectively for Ayes or Noes. Then the members on both sides will be counted and names put in the record. Only this mode yielded reliable lists of names which can be used for research purposes. But this mode took time and agreement by speaker was necessary, thus not used very often.

This chapter provided us with the basic knowledge of our case study to go on to our next chapters. Without this knowledge it would not be possible to understand the dynamics involved in constitution-making. It covered the general information about Pakistan, its territories, political and economic conditions. All this information is very important to understand the analyses provided in further chapters.

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<sup>39</sup> Rule 30(3) states, “Votes may be taken by voices or division and shall be taken by division if any member so desires” As seen in the CAD the division was the only mode which made the counting of votes possible.



## Chapter VII: Short Biographical Sketches of Members of Constitutional Assembly

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## **1 Introduction**

In this chapter we introduce the individual units of our research i.e. members of the constitutional assembly. The 80 members of assembly were all prominent people of their constituencies. Due to bad record keeping in the country, most of these details are lost in time. In addition, many details have been deliberately obscured because of the fact that many of these members (specially belonging to East Pakistan) supported the formation of Bangladesh. History of Pakistan was purged from the account of their contributions by declaring them traitors. Though we were not able to find detailed history for most of them. We did gather a lot of information for our own research's sake. This chapter sums up our field data collection as well as gives a compiled information that could be used by researchers (be it in areas of political science, history, constitutional history etc). Though gathered by painstaking effort from multiple sources, the main document is an old type-written booklet that has never been published<sup>40</sup> and for this reason maybe never consulted. Though we give extra information about the members wherever possible, but the main focus is on the variables that we need for our research.

## **2 Members of East Pakistan**

### **2.1 Abdul Aleem<sup>41</sup>**

A lawyer by profession, Abdul Aleem was born at Comilla in 1906. Initially he practiced law in Alipur Court at Calcutta. But later on, he joined the Calcutta High Court Bar in 1937. He held several administrative positions in provincial government before Pakistan came into being.

At the time of constitution making he was 50 years of age and was an advocate in High Court of Dacca. He was elected to East Pakistan provincial assembly on the

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<sup>40</sup> As stated by the incharge of the archives.

<sup>41</sup> Almost all the data given in this chapter has been taken from a rare document retrieved from National Assembly of Pakistan. It was an old typewritten document that gave short information on the members of the then National Assembly. This being the main source, extra information has been referenced where used accordingly.

United Front Ticket. He belonged to Krishak Sramik Party since 1954 and this party became a part of the United Front later on.

## **2.2 Abdul Karim**

Mr Abdul Karim was born in Tippera District of Bengal. His college education was received from Comilla at Victoria College in 1923. After college, he completed his law degree from Calcutta University in 1928 and practiced as a lawyer at Chandpur. His political life started from Congress. But after a few years he quit Congress. In 1937, he joined Muslim League in its struggle for Pakistan.

After Pakistan came into being, he stayed with Muslim League for a few years and in 1953 he renounced his allegiance to Muslim League. He was then elected to the constitutional assembly on United Front ticket.

## **2.3 Muhammad Abdul Khaleque**

Muhammad Abdul Khaleque was born in 1911 and was 45 years old at the time of constitution-making. When he first started politics he joined All India Congress but later on joined Muslim League in 1946.

After the independence of Pakistan, he joined Awami League. He was President of the Jessore District Awami League. In the elections of 1954 he was elected to the provincial legislature of East Pakistan from where he was elected indirectly to Constitutional Assembly. He was a lawyer by profession.

## **2.4 Al Haj Abdul Wahab Khan**

Mr. Abdul Wahab Khan was born in 1898 in the village of Rahmatpur in the Barisal District. He got his law degree from the Calcutta University in 1921. Later, he joined the Barisal Bar to practice as a lawyer. Soon he established an impressive name in his field.

He served at several executive posts. For example he was Assistant Public Prosecutor for two decades. He was also vice-Chairman of Barisal District Board for about six

years, and Chairman for 12 years. He also served as the Commissioner of the Bansal Municipality for three terms. At the time of constitution-making he was President of the District School Board.

He was elected to provincial assembly of Bengal in 1937 on Krishak Praja party ticket. However he later joined the Muslim League in 1946 and then again changed his allegiance to United Front. He belonged specifically to Nizam-i-Islam wing of United Front. He won the elections to the East Bengal Legislative Assembly in 1954 on United Front ticket. He had done great deal of work in the field of education. He was founder of many educational institutes and madrassahs. He was one of the religious ulemas in the assembly and his opinion held weight in the religious discussions in assembly.

## **2.5 Abdur Rahman Khan**

Mr Abdur Rahman Khan was born in 1906 in Brahmanbaria, sub-division of Tippera District. He was a lawyer by profession and held government posts in relation with his profession e.g. served as Public Prosecutor. He also had an important presence in lawyers unions etc.

In addition to this, Mr Abdur Rahman Khan held executive posts in local government. At provincial government level, he participated much later. He joined his District's Awami League on its inception in 1948 and rose from the ranks to be elected to Provincial Assembly in 1954. He was a staunch provincialist and was proponent of Bengali as a national language. He was jailed for his political activities in 1952 and then again in 1954 under section 92-A. He was also supporter of peasant movements and spoke freely against landlordism.

## **2.6 Abdus Sattar**

Abdus Sattar was born in 1905 in West Bengal in the district of Bhirbum. He was a lawyer by profession and was associated with Alipur Court at Calcutta. After Pakistan came into being he moved to Dacca and joined Dacca High Court in 1950.

## **2.7 Abul Mansur Ahmad**

Abul Mansur Ahmad was born in 1898 in village Dhanikhola of District Mymensingh. He graduated from Dacca College in 1921. Then he secured his Law Degree from the Calcutta University in 1928. He joined Mymensingh Bar right after he graduated from the university. His law practice was quite successful and was his major source of income.

Professionally he was also a journalist. He started his journalism career in 1922 and was a well known name in Calcutta. He was associated with daily newspapers named *Sultan*, *Mussalman*, *Ittehad* and weekly papers named *Khadim* and *Mohammadi*.

Politically he started out with Krishak Praja Party in 1936 and then changed his allegiance to Muslim League in 1947. After establishment of Pakistan, he joined the Awami League party of his district and was then elected to provincial assembly in 1954 on Awami League ticket.

## **2.8 Adeluddin Ahmad**

He was born in Kalinagar, a sub-division of District Faridpur in year 1913. At the time of constitution-making he was 43 years old. He graduated from Rajendra College Faridpur in 1936. He was a lawyer by profession and received his law degree from Calcutta University in 1940. Afterwards he started his law practice in Faridpur. Soon he became quite famous as a lawyer.

Once his law practice was established, he started indulging in politics. He started out under Muslim League banner in 1943 (Khan, 1960, 548). Initially he started at a district level, and later reached the provincial level of Muslim League. When Awami League was established, he joined Awami League right away and was elected to the provincial assembly.

## **2.9 Chaudary Mohammad Ali**

Mr Mohammad Ali was born in 1905 in Jallunder city of Indian Punjab. He obtained his early education from Lahore and then obtained Masters of Science degree from

University of Punjab. After completing his education, he joined Islamia College Lahore as lecturer of Chemistry. Later on he joined the central services of India in Audit and Accounts department. After several years of government service, he was chosen as the Finance Minister and then later on the Prime minister. At the time of the constitution-making, he was the Prime minister and belonged to Muslim League. He was able to win from East Pakistan, the only Muslim League seat.

### **2.10 Ataur Rahman Khan**

Mr Ataur Rahman Khan was born in 1907. His birthplace was Balia, a village of Dacca district. He graduated from the Dacca University and got a law degree in 1936 from the same university.

He started his law practice in Dacca courts and served on several executive posts at local administrative level. He started his political career with Muslim League but changed his allegiance to align with Awami League in 1949. He was quite an active member of Awami League and even performed as an acting president in time of need. He was elected to constitutional assembly on the ticket of Awami League as well.

### **2.11 Moulana Hafiz Athar Ali**

One of the prominent religious scholars in the constitutional assembly, Mr Ali enjoyed quite a clout in the assembly. He believed in religious education and an Islamic constitution.

He was born in 1896 in village Ghungadia of district Sylhet. He started his education in a local religious school but then moved to other cities to pursue higher religious education in different institutes. Most prominent of which was Madrassah Deoband. After he completed his education he came back to his home town, and started teaching at the local religious schools in Sylhet. Not only he was associated with several religious educational institutes but also built a famous mosque (Shaheedi Mosque). He was basically less of a politician and more of a religious zealot. Initially his passion was to save Turkish Khilafat. Then his political activities were focused on creating

Pakistan. After Pakistan came into being, he started focusing on Nizam-i-Islam movement. This political party was established to promote Islamic system in Pakistan.

Since Nizam-i-Islam party was a part of United Front, he won the elections of 1954 on United Front ticket.

### **2.12 Gour Chandra Bala**

He was one of the Hindu members of the constitutional assembly belonging to Scheduled Caste Federation. He was one of the younger members, born in 1927 in village Ullabari in district Faridpur. He was only 29 years old when he became member of constitutional assembly. He started actively participating in politics in 1946 and won the provincial assembly elections in 1954. Professionally he was a teacher in the local high school of Faridpur.

### **2.13 Canteswar Barman**

Mr Canteswar Barman was also a Hindu member belonging to the political party of Congress. He was 60 when he became member of constitutional assembly. He was an ex-army man and a local politician.

### **2.14 Abdul Latif Biswas**

He was born in village Sonakandar of Dacca district in 1897. Professionally he was a lawyer and obtained his law degree from Calcutta University after obtaining graduation from Dacca University. He established a good law practice locally.

Like most politicians of his time, he also started involvement in politics through Muslim League which he joined and quit a few times. However in the constitutional assembly he was elected on United Front ticket specifically Krishak Sramik party. He was quite an active and prominent member of this party. He helped in establishing this party and also he was the general secretary of the party when he became a member of constitutional assembly. He also served as a provincial minister for some time.

### **2.15 Mohammad Nurul Huq Chaudhury**

A prominent lawyer and politician, Mr Mohammad Nurul Huq Chaudhury was 60 years of age in 1956. He was born in Chittagong district and that is where he established his constituency for later elections. He obtained his law degree and established his legal practice in Burma for sometime. Later on when he came to India he started participating in politics under the banner of Swarajya party.

In 1916 he joined Muslim League and became quite prominent in local politics of Bengal.

### **2.16 Hamidul Huq Choudhury**

He was born in Noakhali in 1903. He did his bachelors from Presidency College and his law degree from Calcutta University. He also established his law practice in Calcutta and was an advocate of High Court of Calcutta.

He had a very prominent political and professional career. He was member of boards of multiple law colleges and also a member of several executive boards. He was elected in 1947 to the first constitutional Assembly of Pakistan. He also served as a provincial minister from East Pakistan. He was again elected to second constitutional assembly of Pakistan on behalf of United Front.

### **2.17 Yosuf Ali Chudhury**

Commonly known in history as “Mohan Mian”, Mr Yosuf Ali Chudhury was born in Faridpur district in 1905. Not being able to gain much education, he entered politics at a very early age. Soon he started participating in several movements like Non-Cooperation and Khilafat as early as in 1920’s. He was also very popular in his area for his philanthropic activities. At first he joined the Krishak Praja party of Mr Fazlul Huq but later shifted to Muslim League to support cause of Pakistan. In 1954 however he was elected to constitutional assembly on United Front ticket.



He was a big landlord of the area belonging to a very rich family. He worked for social causes and provided shelter to homeless. He was also founder of a newspaper named *Millat*.

### **2.18 Akshay Kumar Das**

A Hindu Scheduled Caste Federation member, Mr Akshay Kumar Das was born in Sylhet in 1903. Professionally he was a lawyer having a well established practice in Sunanganj. He started his political career with Scheduled Castes Federation Constituency of Assam District. He kept returning to government in several elections. When Pakistan was formed, his district Sylhet was added to Pakistan so he automatically became member of East Pakistan legislative assembly and also became member of first constitutional assembly. In the second constituent assembly he was elected again from the same political party.

### **2.19 Basanta Kumar Das**

Mr Basanta Kumar Das, commonly known as BK - Das was born in Sylhet district in 1883. He was a lawyer with a well established practice in Sylhet.

He started participating in politics from the forum of political party of Congress. He participated in Civil Disobedience and Non-Cooperation movements. He became a member of legislative assembly of Assam and was elected as the speaker of the assembly. He performed as speaker for several years before becoming the home minister for the State of Assam in 1946. He was 73 years old when he became a member of constitutional assembly. In constitutional assembly he was part of the ruling coalition with Muslim League. But he had won the elections on Congress ticket.

### **2.20 A.H Deldar Ahmed**

Mr A.H Deldar Ahmed was born in 1911. By profession he was a lawyer and practiced at Khulna Bar and Dacca High Court.

He started politics through the forum of Muslim League but later joined Awami League. He became quite an active member of Awami League.

### **2.21 Bhupendra Kumar Dutta**

Mr Bhupendra Kumar Dutta was born in village Thakurpur of Jessore district in year 1894. When he was hardly 20 years old, he was arrested for Indo-German conspiracy case. At that time he was a student of bachelors in Calcutta University. He stayed in various prisons of India and Burma for 23 years.

He was an elected member of the first constitutional assembly and was also member of second constitutional assembly on United Front/Congress ticket.

### **2.22 Kamini Kumar Dutta**

Mr Kamini Kumar Dutta was born in Tippera district in 1878. He was a lawyer by profession and did his law degree from Dacca College. He joined the Bar at Comilla and practiced law for several years. He also was an advocate in Calcutta High Court and Dacca High Court after the partition of India.

He started participating in politics from the forum of Congress as early as in 1900. He remained associated with All India Congress till 1947 when he formulated a new political party named Pakistan Gana Samiti. It formed the minorities United Front and was a part of the national United Front. Mr KK Dutta was elected to both first and second constitutional assemblies of Pakistan.

He held several executive posts at district and provincial levels. In 1956 he was health minister for the center<sup>42</sup>. He was an educationist too and founded a college named Srikail in Tippera district.

### **2.23 Farid Ahmad**

Mr Farid Ahmad commonly known in history as Maulvi Farid was a prominent religious scholar in the constitutional assembly. Though he was only 33 at the time of constitution-making in Pakistan, his opinions on religious matter carried considerable weight.

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<sup>42</sup>Monitoring Reports of All India Radio, Jan 30, 1956 (available from National Archives of Pakistan).

He belonged to Chittagong district and was born in 1923. He obtained a Masters degree in English Language and also a Law degree. His main profession though was of being a lawyer. He was associated with Bar of Cox's Bazaar. He also served in government service and was a teacher of English language. Politically he belonged to Nizam-i-Islam party and was a proponent of Islamic constitution.

#### **2.24 Sardar Fazlul Karim**

One of the younger members of constitutional assembly, he was only 32 years old in 1956 as he was born in Barisal district in 1924. He did his Bachelors and Master in Philosophy from Dacca University. Then he joined lecturership in the same university. Only after 2 years into his academic career he was arrested and detained for six years. He only got released in 1955. Later he contested the elections and was elected to the constituent assembly. He was elected as an independent candidate.

#### **2.25 Fazlur Rahman**

Mr Fazlur Rahman was born in 1905 in Dacca which was his home town and constituency. First he did his Masters from Dacca University and then completed the law degree from the same university. He practiced as a lawyer in Dacca for some time. He was closely associated with Dacca University and was a member of University boards.

He got elected from the university constituency to the provincial assembly of Bengal in 1937 and then again in 1946. Initially he started his political career from the platform of Muslim League but later on resigned from its membership. In the second constituent assembly he was an independent candidate. He was an important political figure and remained minister for several portfolios in his public career.

#### **2.26 Peter Paul Gomez**

Mr Peter Paul Gomez was a Christian member of constituent assembly. He was born in 1918 in a small village of district Dacca.

He had a Bachelors degree from Dacca University and worked as an insurance agent in a Life Insurance company. He was dismissed from his job on the reason of union activities. He was later reinstated on his job. He participated in politics under the banner of Congress and was elected to constituent assembly on Congress ticket.

### **2.27 Lutfur Rahman Khan**

He was born in 1911 in district Mymensingh. He did his Bachelors from Islamia College Calcutta. He joined government service in police department but later resigned. Then he started his own business and established a chemical factory. He started politics as a student leader and later on joined Krishak Praja party. He was initially elected to the provincial assembly of Bengal and later on elected to constituent assembly of Pakistan on United Front's ticket.

### **2.28 Mahfuzul Huq**

He was born in 1901 in Chittagong district. He entered the government service as a sub-registrar and retired with grace. Afterwards he joined politics and was elected to the constituent assembly on the United Front ticket.

### **2.29 Mahmud Ali**

Mr Mahmud Ali belonged to Sylhet and was 37 years old in 1956 (Mahmood, 1998, 859). He did his bachelors from MC Collge Sylhet.

He started participating in politics as a student leader. Later on he joined Muslim League but resigned on the issue of Bengali language in 1952. He was a firebrand leader and held an appeal for the younger population of Bengal. He was president of East Pakistan Youth League. He was an active member, convener and general secretary of Ganatantri Dal.

### **2.30 Rasa Raj Mandal**

Mr Rasa Raj Mandal was a Hindu member of the Scheduled Castes Federation in the constituent assembly. He was born in a village of district Dacca and was 41 years old at the time of constitutional discussions.

His constituency was from Dacca Scheduled Castes Federation. He was General Secretary of East Pakistan Scheduled Castes Federation and president of the party in Dacca district.

### **2.31 Syed Misbahuddin Hussain**

He was born in 1891 in a small village in district Mymensingh. First he did his bachelors from Calcutta University and then his law degree from the same university. He practiced law in Calcutta bar and became quite a well known lawyer of his area.

### **2.32 Muslim Ali Molla**

Mr Muslim Ali Molla was born in Rajshahi District in 1893. Professionally he was a businessman and started his business when he was as young as 15 years old. That is why he did not attain much education and did not have a formal degree.

He was elected to provincial assembly of East Pakistan on Awami League ticket and also maintained his allegiance in Constituent assembly.

### **2.33 Sheikh Mujibur Rahman**

Mr Sheikh Mujibur Rahman was 33 year old when he got elected to the constitutional assembly. He was one of the younger energetic politicians of Awami League. He belonged to Faridpur district and started participating in politics at a very young age. He did his bachelors from Calcutta University<sup>43</sup> but was unable to continue further education because he was expelled from the university on political grounds (Mahmood, 1998, 82).

He started out on the platform of Muslim League before 1947 when he must be hardly in his twenties. He became quite famous in Sylhet referendum. He was a leader of the youth and founded Muslim Students League. After Pakistan came into being he got involved in language issues and was jailed for his activities in 1948. He was a law student then and was expelled from the law course because of his political activism.

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<sup>43</sup>Internet Resource: Virtual Bangladesh; A biography of Mujib.

### **2.34 Muzaffar Ahmad**

Mr Muzaffar Ahmad belonged to Chittagong district and was born in 1908. He was a government servant in Railways department. Later on he quit Railways and joined the Civic Guards as commandant of his district. He joined Muslim League in 1944 and soon became an important name at his district level. In 1949 however he quit Muslim League to join the newly rising party Awami League. He was also a writer and wrote a book named *Banglar Patan*.

### **2.35 Nurur Rahman**

Mr Nurur Rahman was born in 1921 in Sylhet district. As with most other politicians of that time he joined Muslim League in 1946 at a young age of 24. After Pakistan came into being, he shifted his political affiliations to the nascent Awami League in 1950. Due to his political activities he was quite many times in conflict with the law and was imprisoned. After several imprisonments he was finally released in 1954 and got elected to the constitutional assembly. He was a business man/merchant by profession.

### **2.36 A.K Fazlul Huq**

Mr Fazlul Huq was born in 1873 in district Barisal. He attained his early education from his home town Barisal. After his high school, he went to Calcutta Presidency College for Bachelors. He did his masters in Mathematics from the same university and also obtained the law degree.

He was a man of many talents. He was a professor at Rajchandra College and also a practicing lawyer. He established his legal practice in Calcutta as well. He was also a journalist and edited the newspapers named *Balak* and *Suhrid*.

He was a charismatic and a seasoned politician. He was a member of Muslim League from its early years and was a very active member. For 5 years in the League's early years he remained president of All India Muslim League. He started his own political party in 1927 and named it Krishak Praja Party. Afterwards however he sided with Muslim League for a few years till partition. Later on, he re-established his party in

Pakistan and called it Krishak Sramik Party. This party was a part of the major parliamentary party, the United Front. He was also the president of United Front at the time of Constitution-making.

### **2.37 Dr S.K.Sen**

Mr Sailendra Kumar Sen was born in 1897 in district Dacca. He was a doctor by profession and had attained his degree of medicine from Calcutta Medical College. He worked in the government sector for some time but soon left it to establish his own practice in Dacca.

He later joined Dacca National Medical College and was soon given the position of professor of surgery. This institute was a non-recognized (non-governmental) institute where he served for 10 precious years during non-cooperation movement, showing his active interest in politics.

He was also a philanthropist. He was actively involved with the homeless shelters, orphan homes and Hindu widows etc. He was elected to the assembly on the ticket of Progressive party.

### **2.38 H.S Suhrawardy**

Mr Hussain Shaheed Suhrawardy was the leader of opposition and an important spokesman in the assembly.

He was born in Midnapur in 1893. Despite his very secular beliefs in assembly he was educated initially at a madarsaah in Calcutta. He studied in St Xavier College afterwards. Then he received his Masters and Law degree from Oxford University. He was called to Bar at Grey's Inn.

He was quite an active political figure at district level of Calcutta. Later he became quite active at the province level and held several portfolios. After the partition of India he became active with Awami League and was a convener and organizer of

Jinnah Awami League. He was elected to the constituent assembly on ticket of Awami League.

### **2.39 Moulana Abdur Rashid Tarkabagish**

Moulana Abdur Rashid Tarkabagish was born in 1900. He was 55 years of age at the time of constitution-making. He came from district Pabna. He was not very educated as he left formal school to join political movements like Khilafat and Non-Cooperation. Later on he joined the famous religious school of Deoband and attained religious education.

Politically he was associated with Muslim League in early years but later on joined Awami League. He was also the chief preacher of Jamiat-e-Ulmae Hind (literally meaning group of religious scholars of India). He also had active involvement in movements like language movement and also Kisan (literal translation as Farmer) movements. In the constitutional assembly he was elected on the ticket of Awami League.

### **2.40 Zahiruddin**

Mr Zahiruddin was born in 1917 in Calcutta. By profession he was a lawyer, with a good practice established in Dacca. He started his political career with Muslim League but later on switched to Awami League since the formation of the party.

## **3 Members of West Pakistan**

### **3.1 Mr Malik Muhammad Firoz Khan Noon**

Mr Malik Muhammad Firoz Khan Noon was born in 1893. He belonged to Lahore and got his early education from Lahore's famous Aitchison College. Later he moved to England to receive his higher education from Wadham College Oxford. He had a degree in Law and was called to Bar from Inner Temple London.



He became involved in politics in 1920's when he got elected to the legislature of Punjab, his native state. He was also an appointed member of Governor General's council and visited America and Canada to explain India's role in World War II. He also represented India in War Cabinet.

After Pakistan came into being, he played a significant role in politics. He belonged to Muslim League and served in various roles e.g. Governor of East Bengal and Chief minister of Punjab. He was a member of constitutional assembly both in the first and second assemblies.

Mr Noon, as commonly known, was also a writer and authored four books. A novel named *Scented Dust* about India, an administrative comparative case study known as *Canada and India*, another descriptive book called *India* and a children's book named *Wisdom From Fools*.

### **3.2 Mian Mumtaz Muhammad Khan Daultana**

Mian Mumtaz Muhammad Khan Daultana was a famous landlord and political leader of the Punjab state of Pakistan. He was born in 1916 in Wihari, Punjab (Mahmood, 1998, 491).

He did his bachelors from the Punjab University having History as majors. Afterwards he obtained his law degree from UK and studied at Corpus Christi College at Oxford. He also did his Masters from the Oxford University.

He became politically active in 1940's when he joined Muslim League. He got elected to Punjab's legislative assembly in 1943. His constituency was rural areas of Sialkot, a small city in Pakistani Punjab. He was a close associate of Mr Jinnah and was appointed by him to All India Muslim League Committee of Action in 1946. He was elected to the first constituent assembly in 1946 and also stayed as a member in the second assembly.

After Pakistan came into being, he stayed as a staunch member of Muslim League and even became its president for some time. He also served as the Finance Minister and also as chief minister of Punjab.

### **3.3 Nawab Muzaffar Ali Khan Kizilbash**

As the word '*Nawab*' in itself means a landlord, Nawab Muzaffar Ali Khan Kizilbash was a landlord belonging to Lahore. His family Kizilbash family was an old and traditional landlord family.

Mr Nawab Muzaffar Ali Khan Kizilbash was born in 1908 in Lahore. He graduated from Lahore from Punjab University and then moved to UK for further studies. He did his law degree from Cambridge University and practiced law for some time in England. In 1936, he came back to India and also got elected to Punjab Assembly in 1936.

He joined Muslim League in 1947 when invited by Mr Jinnah and stayed as its member for a long time.

### **3.4 Syed Mohyuddin Lal Badshah**

Also known as Peer Lal Badshah, he was a popular political leader as well as 'Peer'<sup>44</sup> of Mukhad. He was 47 years old at the time of constitution-making.

### **3.5 Nawab Mushtaq Ahmed Gurmani**

Nawab Mushtaq Ahmed Gurmani was born in 1905. As previously said, the word "Nawab" means a vast estate owner. He sure was a very well established landlord and was very well off. His initial education was obtained through private tuitions but later on took admission in M.A.O College Aligarh for Masters.

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<sup>44</sup>A "Peer" in Indian sub-continent is a highly respected person who is believed to have spiritual powers.

### **3.6 Sardar Abdul Hameed Khan Dasti**

Sardar Abdul Hameed Khan Dasti was born in 1895 in Muzaffargarh. Word “Sardar” means a leader or a chief. Mr Dasti was a chief of clan named Dasti in Muzaffargarh.

He was a politician, a lawyer and a philanthropist. He studied from different colleges all renowned in their own capacity e.g. Islamia College, Government College, and Law College Lahore. He practiced law in his home town Muzaffargarh. He was founder of a religious institution to help the plight of poor and orphan students.

Politically, he was a member of Muslim League and joined the Punjab legislative assembly on Muslim League ticket for the first time in 1945. He served as minister in many governments and was also chief minister of Punjab for some time.

### **3.7 Syed Abid Hussain Shah**

Also known commonly as Col Abid Hussain, Mr Shah was born in 1915 in the city of Jhang, Punjab, Pkaistan.

He had some formal education from Aitchison College, Government College and FC College Lahore. However due to some reasons he was unable to get a formal degree<sup>45</sup>.

Professionally he was a landlord and owned vast lands and farms in Jhang. He also owned a horse farm in Jhang. His estate exists till today and is very well established. He joined Indian military service for some time and then got released to participate in elections of 1945. He got elected to Central legislature. He was then again elected to Punjab assembly after partition in 1951.

### **3.8 I.I Chundrigar**

Mr Ibrahim Ismail Chundrigar was born in 1897 (Khan, 1960, 106). He had a very shining academic career at the Bombay University. He did his law degree from Bombay University. He commenced his law practice in Ahmedabad. Later on he

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<sup>45</sup>As explained by his daughter in a telephonic interview.

shifted his practice to Bombay High Court. He was associated with several social agencies and was involved with many educational institutes.

### **3.9 Chaudri Muhammad Hussain Chatta**

Chaudri Muhammad Hussain Chatta was born in September 1914 at Sheikhpura. He did his bachelors from Government College Lahore and then obtained his law degree from Law College Lahore.

He entered politics when he was very young and was a college student. He was also jailed for some time because of his anti-British political movements. He joined the provincial assembly of Punjab after winning the elections of 1951 from his home town constituency.

### **3.10 Sardar Amir Azam Khan**

Mr Sardar Azim Khan was a minister at the time of first and second constitutional assembly. He belonged to Gujrat (a small city in Punjab) and was born in October 1914. He received his early education from Punjab and then moved to Agra to complete graduation in Arts and Law. He also did masters from the same university.

He entered politics in 1936 when he joined Muslim League. Soon he became a prominent and active member. After partition he settled in a city of Punjab named Rawalpindi and did a great deal of work for the refugees. He became a prominent name in the area with all his relief work.

### **3.11 Soofi Abdul Hameed Khan**

Soofi Abdul Hameed Khan was born in 1900 in Karnal District (now in India). He was educated in Bahawalpur in Sadiq Egerton College. Then he received informal trainings in public affairs from the Prime Minister of Bahawalpur state.

He started taking part in politics in 1926 from Karnal district. Later he got elected to Punjab provincial assembly in 1946 on Muslim League ticket. He also got elected as a

member of Pakistan's first and second constituent assemblies. He was a social worker, doing a great deal of work for refugees coming into Pakistan.

### **3.12 Chaudry Aziz Din**

Mr Din belonged to Lyallpur, a small city in the state of Punjab. By profession he was a lawyer. He was elected to the constitutional assembly on behalf of Muslim League.

### **3.13 Khan Iftikhar Hussain (Khan of Mamdot)**

He was born in 1905 (Mahmood, 1998, 221). He did bachelor from Government College Lahore. He was a very prominent landlord of the area.

He was a Muslim League member from Punjab and he also served as President of Muslim League for some time.

### **3.14 Mian Abdul Bari**

Mian Abdul Bari was also from Punjab, belonging to a city named Lyallpur. He was born in 1895 (Mahmood, 1998, 646). In the First World War he was imprisoned for his political activities and remained jailed for more than a decade. He is not known to have a formal degree. He was elected to second constitutional assembly of Pakistan on Awami League ticket.

### **3.15 Mir Balakh Sher Mazari**

Mir Balakh Sher Mazari was born in Dera Ghazi Khan District in July 1928. He was educated in Lahore from Aitchison's College. But he did not have a formal degree (Mahmood, 1998, 467).

He was chief of *Mazari* clan and owned vast estates and lands. He was a great philanthropist and did a considerable deal of work for students and the poor (Mahmood, 1998, 258). Politically his affiliations were with Muslim League and he contested the elections to Constituent Assembly on Muslim League ticket.

### **3.16 Malik Amir Mohammad Khan**

Malik Amir Mohammad Khan belonged to Mianwali District of Punjab. He is more commonly known as the Khan of Kalabagh. He was an influential leader of his area and was a big landlord. He was from Muslim League. He was a graduate of Oxford University.

### **3.17 Mian Mohammad Iftikharuddin**

Mian Mohammad Iftikharuddin was an independent member of the constituent assembly. He was a famous landlord and owned vast lands in his area. He belonged to Mian family of Baghbanpura (Lahore, Punjab). His early education was from Aitchison College. Later on he did Bachelors from Oxford University.

When he returned from England in 1937, he started participating in politics and was elected to Punjab assembly on Congress ticket. He stayed with Congress for some time and later joined Muslim League in 1945. He again won the election to Punjab assembly in 1946 on Muslim League ticket.

He was expelled from Muslim League later on and then he founded his own political party in 1950 naming it Azad Pakistan Party. He was a member of both the first and the second constitutional assemblies of Pakistan.

### **3.18 C.E.Gibbon**

Mr C.E.Gibbon was from Punjab. He won the elections to the only non-Muslim seat from Punjab. He was a Christian member of the assembly. He won the elections as an independent member but later associated himself with Muslim League.

### **3.19 Mian Jaffer Shah**

Mian Jaffer Shah was born in 1903 in Nowshera. He belonged to one of the most respectable families in Nowshera named as “Kaka Khel Family”.

His initial education was from Islamia College Peshawar. He joined politics early at the age of 16 and joined many political organizations. He had no formal educational degree. He was elected to the provincial assembly in 1937 at Congress ticket.

After Pakistan came into being, Mian Jaffer Shah joined Muslim League and ironically served as the minister of education in NWFP. He was elected to the assembly on Muslim League ticket.

### **3.20 Mr M.R.Kayani**

M.R.Kayani was born in 1900 in Kohat district of NWFP. He was a student of law in Aligarh University when he started participating in politics.

### **3.21 Khan Mohammad Jalaluddin Khan**

Khan Mohammad Jalaluddin Khan, commonly known as “Jalal Baba”, was born in Abbottabad (NWFP) in 1903. He left school at an early age to participate in politics. Later he started his own transportation business.

He was a staunch Muslim League member from the very beginning. He was also a social worker and helped the wounded and the sick in the Kashmir area during the unrest after partition.

### **3.22 Mr M.A.Khuhro**

Mr M.A.Khuhro was a famous landlord of Larkana (Sind). He was born in 1901 in Larkana Sind (Mahmood, 1998, 221).

He did his matriculation exam from Sind Madrassah Karachi but later on quit studies to manage his lands. After some time he joined politics. He was elected to the assembly on Muslim League ticket.

### **3.23 Pir Ali Mohammad Rashdi**

Pir Ali Mohammad Rashdi was an eminent journalist of Sind, representing Pakistan in many countries. He was an editor of *Sind Observer*, a daily newspaper published from Karachi. He belonged to Muslim League.

### **3.24 Syed Amjad Ali**

Syed Amjad Ali was born in 1907 in Lahore Pakistan (Mahmood, 1998, 247). He did his bachelors from Government College Lahore. He started his political career from Unionist Party but later on switched to Muslim League. In 1946 he was elected to first constitutional assembly on Muslim League's ticket. He was a writer also and authored several books including his own biography.

### **3.25 Ghulam Ali Khan Talpur**

Ghulam Ali Khan Talpur was born in 1909. His family was Royals of Talpur and was very influential. He himself owned vast lands and property.

He was educated in Hyderabad (Sind), Aligarh and Bombay. He had a Bachelors degree. He was associated with several organizations e.g. banks, hospitals and municipalities etc. He was elected to the assembly on Muslim League ticket.

### **3.26 Haji Moula Baksh Soomro**

Haji Moula Baksh Soomro was born in Shikarpur district of Sind in 1905. He belonged to the family of famous philanthropist and rich landlords.

He started his career as a magistrate and was later elected to the provincial assembly in 1943. He was a loyal member of Muslim League and was elected to the constitutional assembly on Muslim League ticket.

### **3.27 Mr Siroomal Kirpaldas**

Mr Siroomal Kirpaldas was a Hindu member from Sind. He was born in District Nawabshah of Sind in year 1905. He was elected to the provincial assembly for the



first time in 1946. He was the leader of a Hindu party in Sind and was elected to the assembly on its mandate. Professionally he was a landlord.

### **3.28 Syed Alamdar Hussain Shah Gilani**

Mr Gillani was 36 at the time of constitution-making. He was one of the younger members of Punjab. He belonged to the city Multan and came from a very wealthy and prestigious family of the area.

He had a bachelor's degree from Emerson College, Multan. Later on he entered political life from the platform of Muslim League.

### **3.29 Chaudhry Abdul Ghani Ghuman**

Mr Ghuman belonged to Punjab specifically Sialkot city. He belonged to Muslim League.

### **3.30 Dr Khan Sahib**

Dr Khan Sahib was a seasoned politician from NWFP. His real name was Abdul Jabbar Khan and he was born in 1882 in Uttmanzai in N.W.F.P.

His early education was from Peshawar Government High School and Mission College in NWFP. Then he moved to London to do his medical degree from St Thomas medical college and Hospital. He stayed in London for 11 years (Mahmood, 1998, 470). After graduation, initially he started his practice from public sector but later he established his own private practice.

He joined politics in 1930 when he tried to mobilize the masses to ask for independence from British rule. He was made the provincial chief minister in 1945. He gained much popularity when he abolished forced labour in the area. He freed many laborers from the captivity of big landlords.

### **3.31 Mr Yusuf A Haroon**

Mr Yusuf A Haroon was the only member from the capital area of Karachi.

He was born in Karachi in 1917. His schooling was from St-Patrick's High School, Karachi. He entered political life in 1937 at the young age of 20 when he became the President of Sind Muslim league national guards.

Mr Yusuf A Haroon remained on many important posts within the administration and also within the Muslim League party. Being a successful businessman himself, he was involved with many labour and trade unions.

### **3.32 Sardar Abdur Rashid Khan**

Sardar Abdur Rashid Khan was also a Muslim League member from NWFP. He was an ex-civil servant of police department. He retired at the rank of Inspector-General of Police.

He was born in 1906 in Dera Ismail Khan. Sardar Abdur Rashid Khan received his early education from Edward's College Peshawar and Islamia College Peshawar. Then he did Masters from Aligarh University and also obtained law degree from the same university in 1929 (Khan, 1960, 15).

### **3.33 Syed Ahmed Nawaz Shah Gardezi**

Syed Ahmed Shah Nawaz Gardezi was a nominated member of the constituent assembly. He was from Bahawalpur nominated by the "*Amir*" (leader) of the Bahawalpur. He was in his thirties at the time of constitution-making.

He received his education from the University of Aligarh. He belonged to an old and respectable family of Bahawalpur.

### **3.34 Mian Abdus Salam**

Mian Abdus Salam was also a nominated member of the constitutional assembly. He was also nominated by the Amir of Bahawalpur. He was originally from Jallunder city of East Punjab (now Indian Punjab). He did bachelors from University of Punjab and was then inducted into state services. After starting his political career from Muslim League, he later joined Awami League party.

### **3.35 Mirza Mumtaz Hassan Qizilbash**

Mirza Mumtaz Hassan Qizilbash came from Khairpur state. He was elected to the constituent assembly by the elections through state legislature. He was also a member of the first constituent assembly. He was born in Agra (Uttar Pradesh India ) in 1897 and received his college education from MAO College Aligarh. Later he went to Allahabad University and graduated in 1917.

He started his career with joining of provincial services in Uttar Pradesh and did a great deal of work for the social uplift, agrarian reforms, rural development and relief efforts. After Pakistan came into being, he joined central civil services. After retirement he joined politics.

### **3.36 Nawab Mir Bai Khan**

Nawab Mir Bai Khan belonged to Mekran (Baluchistan States Union). He was the ruler of Mekran. He was elected to the assembly by Baluchistan States Union.

### **3.37 Major-General Mohammad Abdul Huq Jahanzeb**

Major-General Mohammad Abdul Huq Jahanzeb was the ruler of state of Swat and was born in 1915. He represented the interests of North West Frontier States like Chitral, Dhir, Swat and Amb in the constitutional assembly.

He graduated from Islamia College Peshawar. He was a great philanthropist and benevolent ruler of the area. He did a lot of work for the area in sense of economic and social development.

### **3.38 K.B Mehrdil Khan**

K.B Mehrdil Khan belonged to the famous Mahsud tribe. He was a leader of the area of Waziristan and represented their interests in the assembly. He was elected by the tribal advisory council of the area.

### **3.39 Malik Waris Khan**

He was the chief of Malik Din Khel tribe of the Afridis. He was a very important leader of the area and was about 40 years of age. He was also elected by the tribal advisory council of the area.

### **3.40 Malik Jahangir Khan**

Malik Jahangir Khan was the leader of “Maddakhel Wazir tribe” of North Waziristan. He was about 35 years of age. He was also elected by the tribal advisory council of the area.

This chapter provided a short description of the biographies of the members of constitutional assembly. Each member was an individual unit of analysis for our research. These details can be found in the tabular form in Appendix 2. Also the various attributes can be found in different tables of chapter IX.

## Chapter VIII: Results I (An Overall View)

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## **1 The First Session of the New Assembly**

### **1.1 Venue**

The CAP had its first session in on 7<sup>th</sup> July, 1955. It was held in a small city of Punjab named Murree<sup>46</sup>. This city was neither a state capital nor a usual seat for such constitutional or legislative sessions (Nawa-e-Waqt, Lahore. 16<sup>th</sup> June, 1955). Specific arrangements had to be made and the members were settled in hotels (Nawa-e-Waqt, Lahore. 25<sup>th</sup> May 1955). Other issues like health facilities and clubs for evening entertainments were also addressed. Extravagant arrangements had been made in the city to make the members' stay most comfortable. All these arrangements put a lot of pressure on the already meagre national exchequer (Civil and Military Gazette, Lahore, 23<sup>rd</sup> June 1955). The venue of the first session was interesting in the sense that the members from the West Pakistan were enjoying the city like a tourist spot but the members of East Pakistan mostly fell sick because of the weather (Nawa-e-Waqt, Lahore. 8<sup>th</sup> July 1955).

In the very first session the first move by opposition was to change the venue to Dacca. Though the proposition was made by Mr Mujeeb, it had the backing of almost all the opposition members (Civil and Military Gazette, Lahore, 8<sup>th</sup> July 1955). Despite the efforts of opposition party the ruling Muslim League did not give in. By the end of first session there was a unanimous agreement by all members of East Pakistan that they wanted the sessions to be moved to Karachi (the capital) which was done later on (Nawa-e-Waqt Lahore, 8<sup>th</sup> July 1955).

No session was held in East Pakistan despite the insistence by many members of East Pakistan assembly to take some sessions to Dacca. During the discussions on constitution, local elections to provincial assemblies were taking place so many members wanted to stay closer to their constituencies thus the venue of the meetings stayed an alive issue in the debates.

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<sup>46</sup>It is a hill station and a touristic spot in Punjab (West Pakistan). It is known for its cooler weather and attracts many tourists in summer.

## 1.2 The Environment

Generally speaking about the process of the constitution making, one feels that the constitution of Pakistan seemed to be passed in a hurry. First constitutional assembly was already dissolved due to the reason that it had failed to produce a constitution. Country was in a complete political and constitutional chaos and the masses were unhappy with the situation (Jalal, 1991, 194).

The President of the time had already dissolved one assembly and was threatening to put all the democratic process on hold if a constitutional settlement was not reached soon. This fact was mentioned in the assembly debates as well in as many polite words as possible. Another factor was that India had formulated a constitution in 1949 which made the absence of a constitutional set up in Pakistan even more glaring<sup>47</sup>. The government benches did realize that it was important that the constitution had to be finalized regardless of the issues that kept cropping up on daily basis.

On the other hand the opposition members of the assembly wanted to take time and tried to use delaying tactics. It is true that they probably did need more time to discuss the draft or to feel more involved in the preceding discussions, on the other hand this is also true that the country needed a constitution urgently. The delaying efforts of opposition are obvious from this fact that the opposition members fought tooth and nail to circulate the constitutional draft for public opinion (CAD, 16<sup>th</sup> Jan, 1956). In a country where media, modes of communication, literacy, even a population census, i.e. everything that would be relevant for the people to make an informed constitutional choice was missing<sup>48</sup>, to demand a public referendum in such a scenario can be viewed as a tactic to use rules to one's own advantage.

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<sup>47</sup> Indian Constitution was passed in assembly on 26<sup>th</sup> November 1949 as provided by website of Indian government ([http://www.india.gov.in/govt/constitutions\\_india.php](http://www.india.gov.in/govt/constitutions_india.php)).

<sup>48</sup> Mautner (1992, 3) mentions the Principles of Direct Democracy in which he emphasizes that public should be able to make an informed choice. The public should be informed through debates and other means. He also acknowledges the fact that public can be easily manipulated and public debates should be objective, balanced and factual. This kind of informed choice cannot be expected to be made in Pakistan of 1956 and the members knew it. So on one hand it could be reasonable demand, on the other hand a delaying tactic.

### 1.3 The Session

In the first session Mr Mushtaq Ahmad Gurmani, a Muslim League member from Punjab and a very famous landlord was selected as a Chairman for the interim period<sup>49</sup>(till an actual chairman could be elected). 72 members were already elected and the rest had to be nominated or selected by the assembly<sup>50</sup>. On the first day most members were present<sup>51</sup>.

Once the preliminaries were over, the first job of the assembly was to validate old laws and the second was to focus on the formation of the constitution (Khan, 2009, 92). The ruling power wanted to expedite the process of constitution-making as much as possible<sup>52</sup>. The country was into eighth year of its inception and surviving without a constitution. So the new government coalition was eager to have this feather in its crown.

Even before the first session, the government already had a rough constitutional draft that probably came from the efforts of the first constitutional assembly<sup>53</sup>. This draft was given to the new assembly right away and certain committees were created to discuss the draft in detail. However the discussion on the bill in full assembly was only done in the final readings and not before that.

As far as the interest of the members in the assembly is considered, only a few members are seen to have a strong interest in the matter at hand. Many of them are seen to be more interested in the perks and privileges given as seen by the fact that there were a total of 30 days of discussion on constitution and 12 days started on a point of privilege by members. The members initiated the sessions in those 12 days with complaints that their privileges were being undermined and the precious time of

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<sup>49</sup>Civil and Military Gazette, Lahore, 8<sup>th</sup> July 1955.

<sup>50</sup>Nawa-e-Waqt Lahore, 8<sup>th</sup> July 1955.

<sup>51</sup>71 members attended the 1<sup>st</sup> session. Sardar Abdur Rashid was absent on account of illness (Dawn Karachi, 8<sup>th</sup> July, 1955).

<sup>52</sup>Civil and Military Gazette, Lahore, 25<sup>th</sup> June 1955.

<sup>53</sup>Nawa-e-Waqt Lahore, 8<sup>th</sup> July 1955.



assembly was used on these issues<sup>54</sup>. This point of privilege was allowed by the rules where members could show their grievance or indignation on some issue.

As regards the participation of members, only some members are seen as actively participating and all others are seen as either passively following or interested only in hooting and making bitter remarks or probably absent all together (as shown in table 8 of next chapter). There are also some silent members who are only seen at the time of voting and otherwise sitting quietly. These silent members are mostly indifferent in discussion but do vote when they are needed most probably according to party leaders' wishes.

Again the reason for silence could be that in the British India government machinery was run by the majority party Congress and the Muslim League was just a minority. So most members did not have a lot of experience in government business, although as far as the political activities are concerned they were known names. These members could not be that productive as far as constitutional choices are concerned. Professionally some were doctors; some were coming from religious schools<sup>55</sup>. And other totally uneducated, so really the intricacies of constitution making must be Greek to them. It can be suspected that probably they voted according to what their party wished or desired.

There were also coercion and manipulation playing its part. There were threats of detention under the pretence of one case or another. For example, there were different laws e.g. PRODA<sup>56</sup> which could be used by ruling parties to satisfy their own personal vendettas. Many complaints are seen in the newspapers archives of politicians claiming that they have been coerced (Civil and Military Gazette, Lahore, 24th June 1955). Ofcourse it is impossible to tell now whether these complaints were true or not. However the newspapers do narrate the cases like detention of two opposition members of constitutional assembly (CAD 26<sup>th</sup> January 1956). Arrest was made on

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<sup>54</sup> Detailed dates can be seen in Appendix I.

<sup>55</sup> The table 4 of chapter IX provides the detailed professional attributes of members.

<sup>56</sup>Public and Representative Office Disqualification Act. It was a highly dreaded and notorious act passed in 1949 which could determine misconduct on part of public officers and politicians. It could be used according to executive discretion and was a tool to curb and punish opposition.

airport when they were flying from Dacca for a session. The charges made were quite petty.

Manipulation and arm-twisting could be noted even within the party of the government. Several politicians claimed that members of provincial assemblies were threatened to vote for a candidate of ruling party or suffer the consequences under different acts (Civil and Military Gazette, Lahore, 24th June 1955).

There were also threats of expulsion from political party if party discipline was not followed properly (Civil and Military Gazette, Lahore, 1<sup>st</sup> July 1955). A prominent political leader (Sardar Abdul Hameed Khan Dasti) who also held the executive position in Punjab said in a press statement that all the members of their political party should follow the policy guidelines of their party in the assembly. He said in a news report

“Strict discipline must be maintained with in the Muslim League party and no breach of party discipline would be tolerated” (Civil and Military Gazette, Lahore, 1<sup>st</sup> July 1955).

As a consequence of breaching the party discipline Mr Noon and two other members were expelled from party and they created their own wing of Muslim League (Nawa-e-Waqt, Lahore. 24th June, 1955. Also 2nd July, 1955). In the light of these instances one can feel that there must be lots of political games being played at that time. The procedural rules did not allow the process of secret ballot while voting on constitutional rules (Rule 30 of Rules & Procedures of assembly). One could expect that there had to be members who voted under the party influence. These members in personal interactions may support other opinions but are unable to vote against their parties<sup>57</sup>.

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<sup>57</sup>CAD 1st Feb 1956: just as an example, Mr HS Suhrwardy mentions that Mr Gurmani is also proponent of provincial autonomy but is unable to express his preferences because of party discipline.

## 1.4 Transparency of Sessions

The constitutional assembly sessions were open to public and media if the Speaker allowed it (Rule 40 of Rules & Procedures of assembly). Normally the rules of procedures allowed secret meetings but this privilege was not used in any session on constitutional discussion (Rule 40 of Rules & Procedures of assembly). All the statements and opinions were open to public for scrutiny and transparency. This transparency factor maybe appreciated in any developed society but in case of constitution of Pakistan this became a problem for members. The society despite of having minimal educated attitudes on any constitutional clause did have very strong opinions about the religion. This religious fervour in society led to the problem in constitution-making. Whenever a member talked about any constitutional clause to get a little secular the media would term the person as “UnIslamic” or “Kafir” (non-believer) easily jeopardizing his public standing or even personal security. A few members did make a complaint about this (CAD: 8<sup>th</sup> January, 1956) but banishing the press was neither an option nor educating the society on such short notice was an option. So the situation resulted in the fact that even the members who wanted a secular constitution were quite subtle about it<sup>58</sup>.

Similarly when some members expressed opinions that their constituency must be given certain rights, or spoke against a strong centre; they were called traitors by the newspapers (CAD, 23<sup>rd</sup> Jan, 1956). This put their political reputation at stake.

Another problem that author felt regarding the open proceedings of the assembly was that masses were not very informed about the technicalities of the constitutional rules. They were only knowledgeable about how it will turn out politically. For example, people will not know what a federation is? or how federations work? They will just understand what will be their representation or will it be more or less than the

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<sup>58</sup> As a background information we would like to tell that archives associates about 4 members to be associated with press either as journalists or newspaper owners. Three of them were the part of ruling coalition and one from opposition (names are A.K.Fazlul Huq, Pir Ali Rashdi, Abul Mansur Ahmad, Yusuf A Haroon)

neighbouring state, therefore the constitutional clauses seem to hold a lot of political value for common people. In case of the Pakistani constitution, this fact was used by the political leaders for their own political gains. Since the proceedings were public, members made more of political speeches than the actual constitutional discussion. Despite being warned again and again they seem to use the time to further their political gains (CAD, 21st Jan, 1956).

### **1.5 Procedural Issues**

The officers in the assembly had an important role in conducting the business of the assembly<sup>59</sup>. Their neutrality is sometimes assumed but it may always not be the case. In case of Pakistan, the speaker and the deputy speaker of the assembly were from the ruling majority and they seem to respond better to their own party leaders. To the members of ruling party they provide much time and listen reverently while the opposition is interrupted time and again. They are not allowed to make a coherent speech, instead curtailed every other minute. A count was made of the times speaker curtailed the speeches, interrupted a discussion or told the member to cut short his speech. It was observed that speaker did this to the ruling party four times while did this to the opposition members 29 times. This shows that he was able to curtail members to give their opinions in the assembly<sup>60</sup>.

Discussion on the constitution was done according to the standard procedures regarding all bills. The bill was presented to assembly on 8<sup>th</sup> January 1956 by the law minister for *first reading* (CAD: 8<sup>th</sup> January 1956). There was a time period selected for discussion on constitution in general sense. Many hours of discussion were provided to all the members to make general observations. Superficial discussion on the draft was carried out and everyone was allowed to discuss and give their point of view.

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<sup>59</sup> As evident from vast powers provided to speaker of the assembly (Rle 35-39) also provided in section 7.2.

<sup>60</sup> Here we didnot go into the qualitative assessment wether a member was really talking irrelevant or not.

In *second reading* of the bill constitution was read clause by clause and members were allowed to propose amendments. These amendments were then voted on in the assembly and if accepted then these amendments were added to the draft. As many as 600 amendments (Pakistan Times Lahore: 1<sup>st</sup> March 1956) were proposed but hardly any were allowed to be incorporated into the bill. In the *third reading* of the bill the amended draft was finally accepted.

In the debates after the 1<sup>st</sup> reading of the bill, there were two motions moved, the first was that bill will be accepted and moved for further deliberations/second reading (CAD: 1<sup>st</sup> February 1956). The second motion was proposed by the opposition saying that draft was totally unacceptable and should be sent back for complete restructuring. The voting on this resulted in division and a list of members voting in Yes or No was made available in public records<sup>61</sup>.

On the final reading of constitution some people were absent. The ones present, did not participate in individual voting rather the voting took place in such a manner that speaker called out the clause, members stayed quite or murmured *agreed*. As detailed discussion had already taken place so constitution was already *accepted* in essence. The members who were strictly against walked out in protest and can be considered to have rejected the constitution<sup>62</sup>.

## 1.6 The Constitution

Constitution was mostly favoured or opposed according to political party affiliations. It seems from the assembly records that only a few members were vocal enough and the others voted according to what their leaders wanted. Members were either depicted in available literature as *against* constitution as a whole or *in favour of* constitution as a whole and not in favour of individual clauses.

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<sup>61</sup> The voting list is available in appendix 3.

<sup>62</sup> 29th Feb 1956, CAD, Names of the members were HS Suhrwardy , Ataur Rehman, Sheikh Mujib ur Rehman, Zahiruddin, Abdur Rehman Khan, Abdul Khaleque, Maulana Abdur Rashid Tarkabagish, BK Das, BK Dutta, AK Das, Canteswar Barman, Mian Iftikhar ud Din, Mahmud Ali, Dr SK Sen, Rasa Raj Mandal, Gour Chandra Bala.

The study of debates showed right away that the 6 rules that were considered by authors to be the basic milestones of any constitution were not considered too important by the members. As explained before these were chosen because these were related to basic constitutional design. However during the course of reading archives and historical records, some other constitutional rules were noted to have more importance for the individuals concerned. So these rules are also considered and added in the discussions. These are *Language Issues, Islamisation of Constitution, Joint vs. Separate Electorate, Location of federal Capital and also the land reforms and abolition of landlordism.*

Constitution was finally delivered on 29<sup>th</sup> Feb 1956<sup>63</sup>. It contained 234 articles which were divided into 13 parts. Each part contained the articles relating to a specific issue. The constitution also contained six schedules. These were added to the constitution to provide flexibility as schedules can generally be easily amended as compared to the constitution itself. The schedules related to election of president, oaths and affirmations, judiciary, rules and procedures, division of powers between national and provincial governments etc.

As mentioned previously in the book, most ex-British colonies seem to be influenced by the British constitutional systems. We expected certain members to be influenced by British systems e.g. landlords or foreign educated members but during the discussion most members seem to talk less about British constitution and more about Indian constitution. It can be thought that in case of Pakistan, Indian constitution was also of an influence just like British. This maybe because of similar culture, similar history, or similar geographical area. The members quote these constitutions again and again. One could say that constitutions get influenced by ex-colonial influence as well as the countries which are neighbouring or have been in similar circumstances<sup>64</sup>.

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<sup>63</sup>Text of the Constitution of Pakistan 1956 as obtained from the National Assembly of Pakistan.

<sup>64</sup> We can see the details for this in table 11 & 12 of the chapter IX.

## **2 Available Voting Roll-Calls on Certain Clauses**

There are 15 clauses on which detailed voting roll calls are available, as voting on these ones were conducted through division (CAD 9<sup>th</sup> January 1956 to 29<sup>th</sup> Feb 1956)<sup>65</sup>.

### **2.1 Acceptance of the Constitution**

In the discussion on the constitutional bill the first clause that resulted in division was voted upon on 1<sup>st</sup> Feb 1956. The motion was that the constitutional draft should be referred to a select committee for reconsideration OR it should be forwarded for second and third readings (CAD, 1<sup>st</sup> Feb 1956). 13 members from opposition voted Yes and 45 members from government benches voted No. Therefore the bill was forwarded for next readings and not sent back for reconsideration.

### **2.2 Fundamental Rights**

The next available list of voting roll calls was relevant to Fundamental Rights clauses. The clause 10 allowed freedom of association subject to any restrictions imposed by the law of the country (CAD 4th Feb 1956). The opposition demanded that a word “reasonable” be inserted so that the restrictions are not subject to the whims of the ruling parties. However again the word ‘reasonable’ would not bring any change in the clause unless it is defined properly or interpreted by the courts. It seemed like that the opposition only wanted to show their indignation as stated by their leader Mr HS Suhrwardy (CAD 4th Feb 1956). This motion was also turned down by 16 to 35 votes. However in the final draft available today in the archives shows the word reasonable in article 10 of constitution of 1956. This must have come before the third reading when the government benches kept meeting with the opposition for approval of constitutional draft.

Next division came in second reading of the bill about fundamental rights. It was the clause 7 which dealt with human rights (CAD 13th Feb 1956). Opposition wanted that surety is given in the constitution that no man is detained without trial except in case

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<sup>65</sup> The detailed roll calls are available in appendix 3.

of an enemy alien. However this constitutional protection was also refused by 15:35 votes.

The next division was again done in second reading of the constitutional bill. It related to clause 15 of the bill. Clause 15 related to the property rights/fundamental rights (CAD 14th Feb 1956). In some areas of Pakistan the landlord system was prevalent at that time and many of those landlords were in assembly. These amendments talked about landlord system and the acquisition of personal property with or without compensation. Since protection of personal property and right of property was granted by the constitution. The opposition wanted that in case of landlord system the constitution should allow the national and provincial assemblies to acquire such property even without compensation. Understandably enough (with a large percentage of landlords in assembly) this motion was negated by 15 to 39.

### **2.3 Parity Issues**

Next voting roll call is available for Clause 17 which was related to the appointments in federal and government services (CAD 6th Feb 1956). In this the opposition desired to have the clause inserted that in all services the number of appointees will be the same from both East and West Pakistan. This amendment was also turned down by 12 to 34 votes.

Yes/No details are also available for Clause 31 which again related to services in Pakistan (CAD 7th Feb 1956). Opposition wanted that for all government services parity should be maintained between employees from East and West Pakistan and the government should make sure that this is done expeditely. This motion was also rejected by the government benches and turned down by 34 to 15 votes.

### **2.4 Powers of Center**

The sub-clause (3) of clause 122 was also decided by division (CAD 8th Feb 1956). The opposition demanded that the executive authority of federation should be curtailed in provinces and a clause is inserted to that effect. This motion was also turned down by ruling party by 9 to 33 votes. This relevant clause is not present at 122<sup>nd</sup> number in



the final draft which was extricated from archives. Even if the numbers are not same, the spirit of the amendment remains the same and the fact that government benches were not ready to give in on a simple point of principles.

Next list of voters available for the federal list of subjects (5<sup>th</sup> Schedule) (CAD 16th Feb 1956). This relates to the powers of the centre and whether the centre should be powerful or not. The opposition opposed the bill and wanted this list to be as short as only 3 subjects however this was also struck down by 33 to 18 votes.

## **2.5 Presidential Powers**

The next available list is about clause 201, more specifically about its sub-clause (1) (CAD 9th Feb 1956). The number of the clause is again different in the final draft nevertheless it is important to know the subject of the clause. This clause was relevant to the emergency provisions. In case of any disturbance the President and the central government was allowed to declare emergency and to intervene in provincial affairs. Opposition wanted to maintain a limit on this intervention by demanding to insert the words that this can only be done in case of war, external aggression and armed rebellion. This would at least limit the central government that emergency provisions will not be invoked unnecessarily. However this demand by opposition was also turned down by 14:34.

Next division resulted for the constitutional rule regarding presidential powers. This was the clause 33 which gave the President the immunity regarding his election. The clause ensured that the election of President and Vice President was to be conclusive and not to be challenged in any court of law. The members (mainly opposition) who wanted to curtail presidential powers voted in opposition but lost by 18 to 38 votes.

## **2.6 Privileges of the Members**

The next clause to be dealt this way was clause 233. It was about the privileges of the members of national assembly (CAD 10th Feb 1956). Opposition wanted that judicial immunity is granted to some extent and members are not arrested for petty crimes without approval of assembly. As mentioned previously there were many notorious

laws existing at the time that governments could use to their advantage. This amendment could have prevented this to some extent but it was also rejected by 15 to 38 votes.

## **2.7 Country Name**

The next available roll call was about Clause 1 of the constitution which related to the name and territories of Pakistan (CAD 21st Feb 1956). The opposition wanted to oppose this clause because of the objection on the name of the country being Islamic Republic of Pakistan. The opposition members and almost all the non-Muslim members opposed the clause because of the word Islamic. However this clause was also passed by ruling party by 47 to 22 votes.

## **2.8 Islamic Provisions**

The next division was about a similar provision. This was about the Islamic provisions of the constitution. The clause was 32<sup>nd</sup> in number and talked about the qualification of a member to become president. Along with other factors like being atleast 40 years of age and eligible to be a member of National Assembly. The President had to be a Muslim. Again many members had apprehensions regarding the President being Muslim only (CAD 21st Feb 1956). Some members had the objection that this was against fundamental rights that non-Muslim members were debarred from becoming a President. Many non-Muslim members were against this qualification. However the clause was passed by 43 votes in favour and 20 against (CAD 21st Feb 1956).

## **2.9 Electorates**

The next voting roll call is available for clause 153 (available as article 145 in the final draft) (CAD 21st Feb 1956). This related to principles of electorates. The constitution advised that elections may be held on basis of joint or separate electorates according to wishes of National and Provincial assemblies. However the members of opposition wanted that joint electorates should be prescribed by the Constitution. However the constitution stayed vague about the issue and delegated the power to the legislatures. Despite the wishes of opposition the motion was rejected by 46 to 20 votes.

For the Constitutional Bill to be passed for a third reading the opposition demanded that a division is called for again (CAD 23rd Feb 1956). The reason was to slow down the process so that the bill could be reconsidered again. However the ruling majority struck down the motion by 31 to 15 votes and the bill moved for a third reading.

### **3 Specific Institutions in Focus**

As discussed in chapter IV, six aspects of constitutional structure were chosen carefully to be discussed in detail. In case of Pakistan the clauses which related to these institutions were thoroughly read and researched. But during the course of the research, some new issues presented themselves which seemed to hold more interest for the members as evident from table 10 of chapter IX. The discussions made by the members revolved more around these new issues than to the questions of basic constitutional design. These were Islamic provisions in constitution, parity amongst the two wings and language issues etc. They are also discussed in the later part of this chapter, but first we go through our initially chosen six rules.

#### **3.1 Federalism**

Federalism provides an interesting form of government to those states which do not want to leave their autonomy while have to unite together for a common goal e.g. for defence reasons or for economic reasons. In case of Pakistan multicultural people joined hand for a common religion (or to say separation from Hindu majority).

Pakistan in 1956 had unique geographical issues. There were two geographical parts of country which were more than a thousand mile apart and had a hostile country (India) in the middle. Both wings were culturally, ethnically and linguistically different from each other. East Pakistan (which became Bangladesh later on) was just one province, much smaller in area but holding 55% of population. While West Pakistan had 45% of population, much bigger area and four different provinces. These provinces again had similar differences amongst them. In such circumstances, where there were no similarities between people belonging to different parts of the same country, federation was an assumed form of government. No record in archival material shows that there was any objection to this type of government.

### 3.1.1 Working of a Federation

Whenever a country decides to have a federal form of government, the next obvious fact is that there will be dual government i.e. central and provincial. In federal system it is important that a constitution must either explicitly or implicitly dictate their **spheres of action** and also ensure that their encroachment upon each other is restricted. Generally this is done by providing three lists in the constitution. Federal list enumerates the subjects in control of federal government, Provincial list names the subjects for provinces to run and concurrent/residual lists which name the left-over subjects to central government or to provincial government as desired by the constitution-makers. These lists dictate the *Division of Powers* between the central and provincial governments.

The other question which comes up after a federation is decided to be created is the **representation of states** in the federal legislature. Almost always in case of federation there are two houses of the federal legislature. In US these are Senate and Congress, in India Lok Sabha and Rajya Sabha, in Germany Bundestag and Bundesrat. Sometimes even unitary governments allow bicameral system to accommodate their society setups as in case of United Kingdom. However unlike these countries, One-Unit formula envisaged a single house of Parliament named national assembly (Khan, 2009, 92). It consisted of 300 members, half coming from each part of Pakistan thereby giving a simpler solution to all issues regarding the representation of states.

Regardless of what the theory of Federalism says the questions of working of federation are always answered according to a country's own perception of its problems. Generally no set rule works for everyone and the constitution-makers decide according to their own needs and problems. In case of Pakistan, federal system was an undisputed choice. But the next questions were a problem i.e. of representation of provinces and division of power. That is why the intricacies of the new federation stayed undecided for 9 long years.

### 3.1.2 Representation of Provinces

The representation of provinces was the basic question that was the contentious issue between the provinces for about 8 years. Because of this basic question constitution

could not be finalized for so long. The question of representation was solved by passing the one unit bill in assembly in 1955. This was the landmark constitutional compromise that finally led to the decision of constitutional draft (Maluka, 1995, 142ff).

As mentioned previously West Pakistan consisted of four provinces, 796096 sq.km area and 45% population while East Pakistan was just one province, 147570 sq.km of area with 55% population (Maluka, 1995, 131ff). Any basis of representation whether on basis of area, population or provinces was bound to fail. Then came forward the unique administrative formula named One-unit Bill. It was quite a compromise by West Pakistan which agreed to let go of its provinces and all units merged to make one single great province named West Pakistan, bringing it in parity with East Pakistan. This move brought both East Pakistan and West Pakistan in equality and the only issue left was to now decide the number of members in the assembly.

However there were many objections that arose on this decision (National Assembly Debates, 31<sup>st</sup> August, 1955). As we already know that East Pakistan had a population more than West Pakistan so some people believed that their representation was less than what they deserved. Similarly in case of West Pakistan Punjab had the most population but its representation was less than what was Punjabis expected.

People also had the fear that the rights of the smaller provinces will be usurped by the bigger ones once the West Pakistan became a single unit (National Assembly Debates, 31<sup>st</sup> August, 1955). Also some politicians believed that this move reduced the number of central and provincial ministries and was not in their interest. Also there were questions as to how to divide military and civils beauracracies amongst the two states. Again remote administration had issues of its own.

Some people also believed that the method that the assembly had easily decided the issue within closed walls was not a popular way rather this decision should have made by the people, by referendum or other mode (Maluka, 1995, 145).

People of East Pakistan had also a major objection that Karachi was being made a part of West Pakistan. They believed that since Karachi was the capital at that time it

should not be a part of any unit rather it should stay independent. During the partition of India East Pakistan had already lost a major industrially developed city name “Calcutta” to India and they did not want now that Karachi is made a part of West Pakistan. With all these apprehensions the West Pakistan unification came into being and which later facilitated the formation of the constitution.

The area of the West Pakistan was too great to be centrally administered, similarly the provinces were culturally, ethnically quite distinguished to be combined like this however the move was successful in the sense that it led to constitution formation later on. There were some student demonstration in Sindh and Karachi against this merger but overall the move was welcome (Khan, 2009, 93).

### **3.1.3 Division of Power**

Division of powers and not usurping the other government’s powers is the spirit of federalism. The basic issue between the federalists and anti-federalists in US was almost the same as in case of Pakistan. In Pakistan some people wanted extreme form of federation bordering on a confederation while others wanted a strong and dominant centre. There was a debate of some members wanting a powerful centre with as many as 51 subjects in federal list while others wanting only three subjects for the center (defence, currency, and foreign policy) (CAD, 17<sup>th</sup> Jan, 1956). In our discussion we term them as Centralists and Provincialists, favouring a strong centre or a strong province respectively.

There are no set rules or formulae to state a perfect blend of federalism. All the countries which adopted this form of governments had to devise their own optimal level of centralisation or de-centralisation. In case of Pakistan the issue was to define the subjects which are to be given to states or centre.

### **3.1.4 A Comparison with other Federations**

To have an idea and comparison we can look into the US Constitution. US has the oldest running constitution and is explicitly federal in character. According to it the states and the people are the sources of power and the center has only those powers which are delegated to the center by the states. This fact is explicitly reiterated in the

10<sup>th</sup> amendment of the constitution so that no central government can get tempted to encroach upon state powers<sup>66</sup>. Section 8 of the Article I of the US constitution clearly enumerates the subjects handed over to the central government. There are 18 clauses which generally relate to defence, currency, postal, naturalization etc.

In Indian Constitution, Part XI relates to the federation details. It spans the Articles 245 - 263 (Constitution of India). These articles clearly define the relations between the centre and states. There are three lists of subjects, federal, state and concurrent lists. While the concurrent subjects can be debated upon by both national and state governments, national parliament laws have supremacy over the state laws. Similarly national government can legislate over the state subjects if need arises i.e. in case of emergency or threat to national security, thereby giving more power to national government.

Unlike US constitution which embodies the central lists within the constitution's main text Indian constitution enumerates this list in the specific schedules. Seventh Schedule provides this list and derives its powers from Article 246. The union list/federal list itself contains 97 subjects and can also be extended if need arises. There have been a few amendments in these specific articles over time but the essence has remained the same. In addition to this the concurrent list had 47 subjects and National Parliament's decisions stood superior to those of state governments. So implicitly speaking the concurrent list can also be considered in essence as a second federal list.

In Pakistani constitution of 1956. Part IV of the Pakistani constitution contained the articles relevant to federation. The articles ranged from 32 to 69. The 'Part IV' further contained chapters. Chapter I was related to federal government and how the executive branch functioned. The Chapter II contained the articles relevant to parliament. It talked about the parliament and the eligibility of the members, and also about its functioning.

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<sup>66</sup> The Constitution of the United States.

Part VI of the constitution contained articles from 105-132. These were divided into four chapters. These articles mention the three lists and stated that concurrent lists can be legislated by the provinces and state governments but the supremacy of parliament remains over provinces in case of dispute. The articles are not only in essence similarly to relevant articles of the Indian Constitution but are at times in exact same language.

One difference remains however. These articles do not provide any emergency powers to national parliament rather the emergency powers are with President only. Also the residuary powers are vested with states unlike Indian Constitution which rests the residual powers with national government under Article 248.

The second question that came up was assigning the powers to the centre or provinces. Since members referred to Indian constitution time and again in the debates. India had 97 subjects in Federal list as compared to 51 (CAD 16th Jan 1956) in Pakistan as envisaged in the initial draft. India had 66 subjects in state lists as compared to 94 in Pakistan and then again the residuary powers went to national government in case of India while to Provinces in Pakistan. India and Pakistan had 47 and 19 subjects in concurrent lists respectively.

In Pakistani Constitution emergency provisions were provided but they did not allow the national government to take up the subjects of provinces while in Indian constitution they were explicitly allowed. In case of US federation only a few subjects are given to national legislature and those are embodied in the text of constitution thus made rather difficult to amend. So what was the problem bothering the constitutional assembly members of Pakistan? They were getting a much flexible federation despite the fact that many members even the Prime Minister was a proponent of unitary state. He mentioned in the debates that personally he would have preferred a unitary government but since it is unacceptable for many people so he would rather go with the federal system (CAD, 16th Jan 1956).

According to most of the opposition leaders they had promised to their voters that they would only give three subjects to national government namely defence, foreign affairs and currency. So how did they envisage the running of such a national government



without its ability to tax or levy duties? The opposition main demand that a complete provincial autonomy is given was strange in its own self as no government can take up responsibilities without been given some rights. With only three powers a center was bound to remain weak.

People of East Pakistan were suppressed badly in British Dominance. The area was a great bearer of agricultural income and produced many export quality agricultural products. People were apprehensive that in case of a strong center, income from East Pakistan will not be spent on the development of province rather will be drained away. And they will remain suppressed and down trodden as they were in British rule. This argument had been raised in assembly with a lot of numbers and figures (CAD, 16<sup>th</sup> Jan, 1956). Since it is not possible to double check these number this far down in history and no one was contradicting it in the assembly, so probably they were right. And they did have reasons for their apprehensions.

After having an overview of the situation in Pakistan and in its constitutional assembly in 1956 we come back to our initial hypotheses. We expected members coming from rich states, to support federalism. Also we expected older age group, landowner, foreign educated and Ulema to vote against federal system.

The voting roll calls that we use have been previously described. We use the voting roll call on the sub-clause (3) of clause 122 which related to curtailment of the executive authority of federation and another vote on clause 201, sub-clause (1) which was relevant to the emergency provisions exercised by the President and the central government. We also use a third voting roll call for the federal list of subjects (5<sup>th</sup> Schedule). This relates to the powers of the centre and whether the centre should be powerful or not. We term the people who want to curtail the executive authority in province or who want to limit the emergency powers or minimise the federal list as provincialists and others as federalists.

### **3.2 Structure of Government (Presidential vs. Parliamentary)**

Just like federation was an assumed form of government, structure of government was also parliamentary without question. No archival record showed that there was any

proposal for a presidential form of government. This question may have arisen between the members but the members worked in committees and no archival records are available for those committees' discussions. These records were not formally maintained in the first place thus no relevant data is available in archival material.

Parliamentary system was a system of choice by all members and there was no second guess about it. It could also be that the Viceroy of British government was an all powerful position in the colonial rule and the masses had to struggle a lot to make their voice heard at the government level (CAD, 17<sup>th</sup> Jan, 1956). So it could be that after the British rule, India and Pakistan wanted representative parliamentary democracies. Where head of the government would be Prime Minister and would not be all powerful in his own capacity rather would be subject to the advice of parliament. Also since India and Britain both have the parliamentary structure system, maybe their system was deliberately chosen by the constitution-makers of Pakistan. Because these two countries are mentioned time and again in the debates as given in tables 11 and 12 of chapter IX.

The second constitutional assembly was given a rough draft proposal which envisaged a parliamentary system of government. And the discussions arose only about how much parliamentary supremacy the system should hold.

Major problem that instigated many discussions was the problem with the authorities of the Head of the State and Head of the government. Since Pakistan had a governor-general who had a vast power under the provisional constitution (adapted from colonial act which gave vast powers to British appointed governor - general). There were now a few people who wanted to curtail the powers of president while others did not want so (CAD, 17<sup>th</sup> Jan, 1956). The governor-general had already dissolved the first constitutional assembly and many members of the parliament now wanted to curtail this power. The disputed issues were that whether the president should be able to dismiss the democratically elected government? If he should have the power to proclaim emergency? What should be his powers during emergency?

Opposition members had the objection that President of Pakistan holds so much powers and he is not even directly elected like the president of the US. Another issue

was that President held the power to dissolve the directly elected parliament which many people objected strongly.

Since the president was the head of the executive there was an apprehension that the president with vast powers will not only affect the parliamentary democracy rather it will make the center even stronger (CAD, 23rd Jan, 1956) thereby compromising the provincial autonomy. The members linked the provincial autonomy to the powers of president. If President had limited powers then the center will not intervene in the provinces and vice-versa.

The hypotheses proposed were that the following should be promoting the presidential system or in our case presidential powers; members with a strong political presence, members belonging to majority (ethnic, political, religious and linguistic) and foreign educated members. During the course of research, we did not see members making a choice between the two systems; rather the issue was how much power to grant to president and parliament. We call them presidentialists and parliamentarists according to their choice of power shift.

On a similar note the members who are expected to vote for curtailments of presidential powers will be, members belonging to the minority (ethnic, political, religious, linguistic), members belonging to religious interest groups or Ulema, older age groups and landowners. We call them Parliamentarists.

We have two voting lists that relate to the powers of the president. The first is the clause 33 which gave the President the immunity regarding his election (CAD, 20<sup>th</sup> Feb, 1956). And the second is about clause 201, more specifically about its sub-clause (1). This clause was relevant to the emergency powers of President and the center (CAD, 9th Feb, 1956).

### **3.3 Human Rights**

As was with the general trend of all the constitutions at that time, fundamental rights were also added into the Pakistani constitution. There was no argument that these

fundamental rights will be provided to citizens through constitution. But again the contention arose over the provisos attached.

Most of the fundamental rights were conditional. It is true that rights are only granted as long as they do not interfere in another person's personal sphere. No man can have unlimited rights. There were vast fundamental rights granted provided they did not involve national security, treason etc. Some members believed that these provisos could be used by coming governments against their political opponents and to curb human rights (CAD, 21st Jan, 1956).

Some members had an issue with only a Muslim eligible to become a President or a Vice-President; they thought this clause was against human rights and minority rights. Another issue was that the constitutional draft provided that a man could be detained without a trial (CAD, 21st Jan, 1956). Many members objected that it was against the spirit of fundamental rights. There were also issues that people had the right to assemble freely unless it was against public order. Again such qualifications attached to the clauses dampened the spirit of fundamental rights as stated by many East Pakistan members.

There are some fundamental rights clauses, for which voting was done though division. The first available list of voting roll call was relevant to fundamental rights clause 10 (CAD, 4th Feb, 1956). It allowed freedom of association subject to any restrictions imposed by the law of the country. Next list is about clause 7 which dealt with human rights (CAD, 13th Feb, 1956). Opposition wanted that surety is given in the constitution that no man is detained without trial except in case of an enemy alien. The next controversial clause was clause 15 of the bill which related to the property rights/fundamental rights and the acquisition of personal property with or without compensation (CAD, 13th Feb, 1956). The clause 32 was also voted by division. It talked about the rule that only a Muslim can become President (CAD, 21st Feb, 1956).

### **3.4 Number of Houses**

The debates over this issue are minimal. It was already known that national assembly would consist of a single house which will consist of equal members from both units

of Pakistan. This was decided in the One-Unit Bill that converted the West Pakistan in to a single unit and parity was provided to both units in the assembly (Khan, 2009, 92). It was reconciliation between the two wings with differences in population. As the procedure of the bill of one – unit is totally different and not discussed in constitutional assembly (secondly this was agreed already by all the parties) so checking this variable becomes irrelevant.

However another idea could be that whoever rejected the constitution can be taken as to have rejected this option as well. In all the available literature only at one point, Mr Fazlur Rehman has shown agreement to uni-cameral legislature verbally (Pakistan Times Lahore, 8th January 1956). Otherwise there is no mention of this rule in the debates or archival material.

### **3.5 Judicial Independence**

The discussion on these rules is minimal and only a few members have taken this into account.

### **3.6 Procedures of Amendments**

No reference to this clause has been found in any records. At only one point, Prime minister who said that they made the amendment process easy so members who have any objection are able to propose amendments (CAD 17th February 1956). He said that after 8 years it was important to have a constitution, and the short-comings could be dealt with later on through amendments. Article 216 related to the procedure to amend the constitution. It allowed that  $\frac{2}{3}^{\text{rd}}$  of total members should be present and voting and the amendment should be passed by a simple majority of those attending members.

### **3.7 Islamisation of the Constitution**

Through out the debates regarding the constitution, this problem was the most confusing of all. Almost every vocal member discussed it or at least gave reference to it, but not a single one of them defined what they actually wanted.

There was a group of members in the assembly who came from the religious schools and madrassahs (table 6, chapter IX). These madrassahs taught local languages as well as Arabic and taught Quran and Fiqh (Islamic Jurisprudence). Surely these members knew about Islamic law more than other members.

Taking one example, Mr Maulana Tarkabagish (CAD 17<sup>th</sup> January 1956) spoke for a very long time that the constitution was not Islamic enough but all he could come up with was that Islam does not allow a tyrant and a president in this constitutional draft will be nothing but a tyrant. But in essence he could not provide definition of an Islamic President. Such a definition/description was not given by any other member in the debates as well.

Government benches had added a clause in the constitution that only a Muslim can be a president but opposition believed that it was against the right of minorities (Article 32). Infact these provisions only played the word game otherwise there were very slim chances of a non-Muslim becoming a president in Pakistan as 90% population was Muslim.

Government benches as well as opposition benches both had their own version of Islam and both could not convince each other. It is probable that it was a winning card on the basis of which simple, uneducated masses could be manipulated.

### **3.8 The Issue of Electorates**

The issue of electorates was so problematic that in the end the constitution decided to stay silent over this inflammatory issue. Since Pakistan was established on the basis of religion and Muslim politicians claimed that Muslims needed their own homeland to profess their religion. So many orthodox members believed that Hindus or Christians living in Pakistan are different from them and they should not be able to contest elections or vote in generality. Rather special seats should be allocated to them. Most non-Muslim members wanted to contest the elections on the basis of joint electorates even if they had more chances of losing, but they said that they wanted to be a part of the nation (CAD, 28<sup>th</sup> Jan, 1956). However government benches especially Ulema

would not let this happen and demanded separate electorates for them (CAD, 23rd Jan, 1956). In the end constitution left this to the choice of legislatures.

A voting roll call is available for clause 153 (available as article 145 in the final draft). This related to the principles of electorates which the opposition lost (CAD, 21st Feb, 1956).

### **3.9 The Issue of Capital**

There were also issues regarding what should be the capital of Pakistan. Islamabad the capital today did not exist then and both wings wanted that the capital should be in their wing. East Pakistanis wanted that capital should be Dacca as 55% population lives in East Pakistan (CAD 21<sup>st</sup> January 1956). While West Pakistan members did not want to shift the capital from Karachi.

Sindh as a province had its own issues that it is forced to give up Karachi as it was the most developed and industrialised city of Pakistan at that time. The issue of forming the capital kept coming up in the debates. Karachi was a rich city, and a lot of revenue came from it. East Pakistan demanded that since it was the capital of federation, the revenues should be distributed judiciously. This issue stayed alive in many parts of the constitutional discussions and took the focus away from constitutional rules of general design (CAD, 16<sup>th</sup> Jan, 1956).

### **3.10 The Issue of Parity**

This was also an issue that was on the minds of the constitution-makers especially from East Pakistan. Parity or balance between the two wings of the country was very important for East Pakistanis as they considered themselves at a disadvantage. Their per capita income was lesser and the expenditures of government were lesser on that side (as claimed by members in their speeches) (CAD, 9<sup>th</sup> January 1956 by Mr Abul Mansur Ahmad). The reason East Pakistan wanted provincial autonomy was also related to this issue because they did not want that their revenues go to a common pool and expended by the center or West Pakistan. Opposition also demanded that all federal services should hold equal number of employees from East and West Pakistan

to create a balance (CAD, 7th feb, 1956). The government benches struck down these demands by majority voting. Such a simple and straightforward assurance from constitution could have lowered skepticism from opposition benches but it was not done so.

This desire of parity also made opposition demand curtailment of powers of center and president. The parity issue led to the making of One-Unit which then enabled the country to form a single chamber parliament with equal number of members from both sides. This was again an attempt to attain the highly evasive parity.

The language issue also related to the parity issue as the East Pakistan members wanted Bengali to be given equal status as Urdu and they wanted that their language is promoted accordingly. A member mentioned that even the radio stations were minimal in East Pakistan which was an idea to suppress their culture (CAD: 21st January, 1956). In a nutshell all the demands could be boiled down to this single desire as to not let go of their own powers/revenues and yet enjoy the security of a common defence, foreign affairs etc.

### **3.11 Language Issues**

As mentioned previously, language became an issue because of the presence of varying ethnicities and linguistic groups in Pakistan. However the main friction was between Urdu and Bengali. Urdu is derived originally from Arabic, Turkish and Persian and was spoken in Muslim groups in all over India<sup>67</sup>. On the other hand, Bengali was mostly limited in East Pakistan. That is why most people believed that official language of Pakistan would be Urdu as all groups will be able to speak and understand. However this issue flared up right after independence when constitutional discussions started to take place. Since the founder of Pakistan Mr Jinnah had stated at a public forum that national language of Pakistan will be Urdu, many people wanted to give respect to his wishes. They wanted the national language to be Urdu while Bengalis claimed that since 55% people speak Bengali then atleast it should be accepted as a state language. This was one of the issues that kept coming up through

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<sup>67</sup> Online Resource: <http://www.britannica.com/EBchecked/topic/619612/Urdu-language>



out the constitutional discussions. Many members in order to emphasize this point and using rule 29 of the Rules and Procedures of assembly made their speeches in Bengali. These speeches were later on translated into English and Urdu. English was the official language and all business in government offices was conducted in English.

East Pakistan members believed that the suppression of their language is a plan to suppress their identity as was done in British rule. That is why they were more protective of their language and this issue took up a lot of time of the assembly.

With this we sum up the general discussions and cursory observations as noted by the author while reading archives. The chapter consisted of obvious impressions developed by reading the newspapers and radio reports of the time. We continue the discussion on specific points in the next chapter.

## Chapter IX: Results II (Details)

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This chapter compiles the results of our research in an organised way. It provides the results of testing of specific hypotheses. First a systematic overview of the various personal attributes of the members is provided e.g. ages, professions, religion etc and then the discussion on the specific constitutional rules is made.

The constitution of Pakistan was passed on 29<sup>th</sup> Feb 1956 (CAD, 29<sup>th</sup> Feb 1956). The discussion on the constitution started on 9<sup>th</sup> January 1956. In total the constitution was passed in 51 days out of which 30 days consisted of debate on constitution and the rest were free days<sup>68</sup>. The sessions usually lasted from 3p.m till late in the evening. The constitution making though theoretically lasted 51 (CAD, Jan-March 1956) because the constitutional draft drew heavily from the draft of the first assembly (which took about 8 years to come up with the draft). The second assembly only modified what was already provided by the first assembly. However the credit goes to the second assembly for providing a reasonably accepted solution to the contentious issue of “Parity<sup>69</sup>”. The assembly consisted of 80 members in total. 72 members were elected through indirect elections and the rest 8 were the nominated members<sup>70</sup>.

## **1 Short Tabular Descriptions of Members and Their Attributes**

The detailed raw data can be seen in the excel files given as Appendix II. For short overview multiple tables are provided here for general information.

### **1.1 The geographical distribution of the members**

The geographical distribution of the members between different parts of the country was as follows.

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<sup>68</sup> The dates in which the session took place are provided in Table I of Appendix.

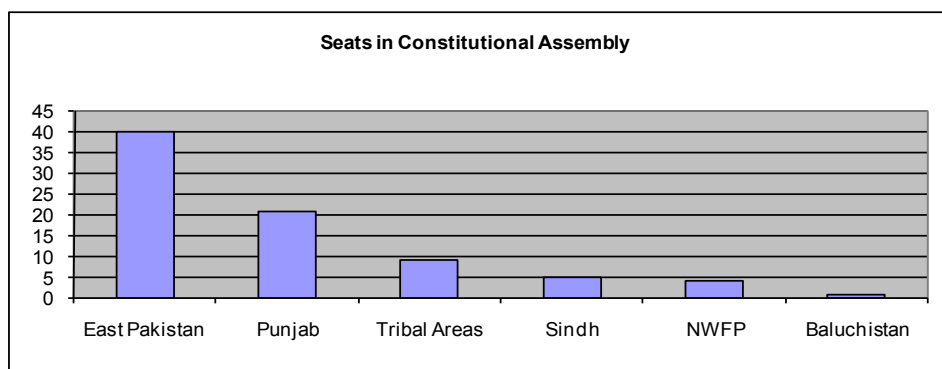
<sup>69</sup> The issue of “Parity” is explained in detail later (Section 6.1).

<sup>70</sup> Nawa-e-Waqt Lahore, 8<sup>th</sup> July 1955.

	States	Seats in Constitutional Assembly	Percentage of total seats
<b>East Pakistan</b>	East Pakistan	40	50.00%
<b>West Pakistan</b>	Punjab	21	26.25%
	Tribal Areas	9	11.25%
	Sindh	5	6.25%
	NWFP	4	5.00%
	Baluchistan	1	1.25%

Table 1: List of members according to geographical distribution

The same can be viewed in the graphical mode below.

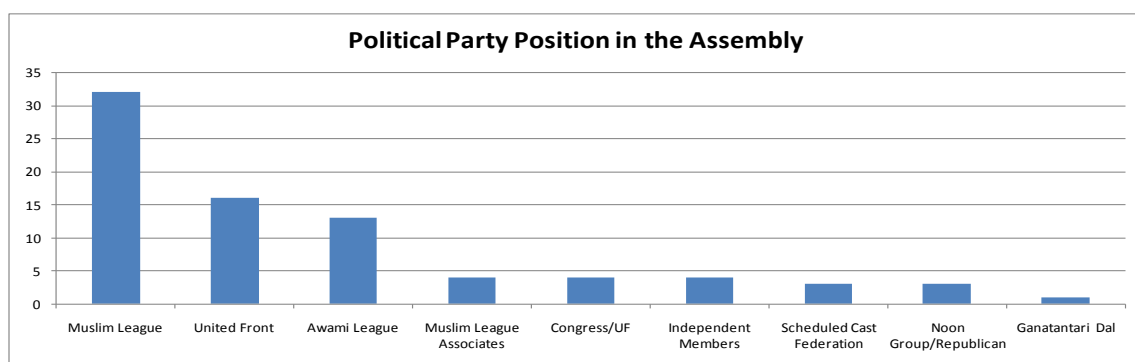


## 1.2 The Political Parties in the Assembly

As far as the political parties in the assembly are concerned, a full detail has been given in preceding chapters. A short tabular and graphical overview is as follows.

Political Party	Seats in the Assembly	Percentage of Seats in the Assembly
Muslim League	32	40.00%
United Front	16	20.00%
Awami League	13	16.25%
Muslim League Associates	4	5.00%
Congress/UF	4	5.00%
Independent Members	4	5.00%
Scheduled Cast Federation	3	3.75%
Noon Group/Republican	3	3.75%
Ganatantri Dal	1	1.25%

Table 2: List of members according to political parties

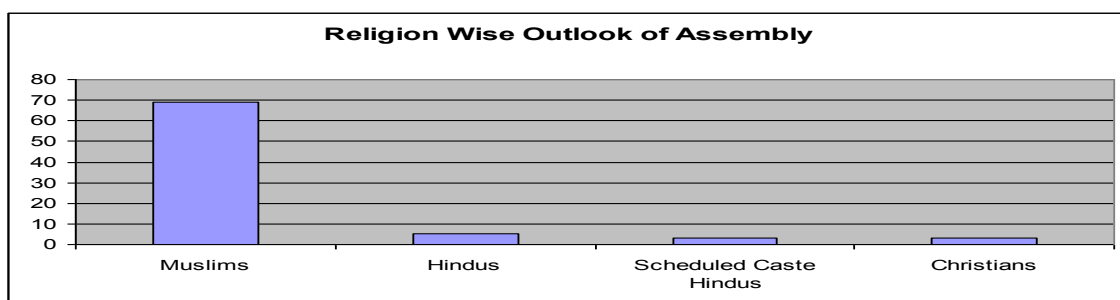


### 1.3 Religion wise Outlook of the Assembly

The religion wise distribution of members in assembly is shown below.

Religion	Number of Members	Percentage
Muslims	69	86.25%
Hindus	5	6.25%
Scheduled Caste Hindus	3	3.75%
Christians	3	3.75%

Table 3: List of members according to religion.

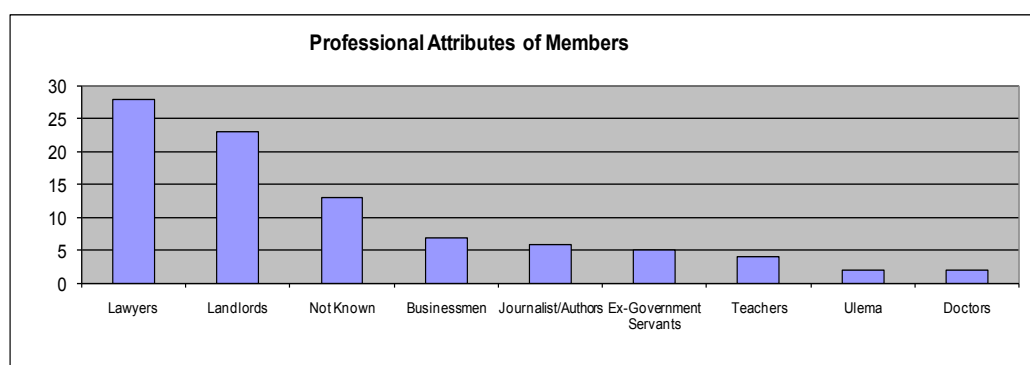


## 1.4 The Professions Most Dominant in Assembly

The profession-wise distribution in the tabulated form is as below.

Profession	Number	Percentage
Lawyers	28	35.00%
Landlords	23	28.75%
Not Known	13	16.25%
Businessmen	7	8.75%
Journalist/Authors	6	7.50%
Ex-Government Servants	5	6.25%
Teachers	4	5.00%
Ulema	2	2.50%
Doctors	2	2.50%

Table 4: List of members according to professions

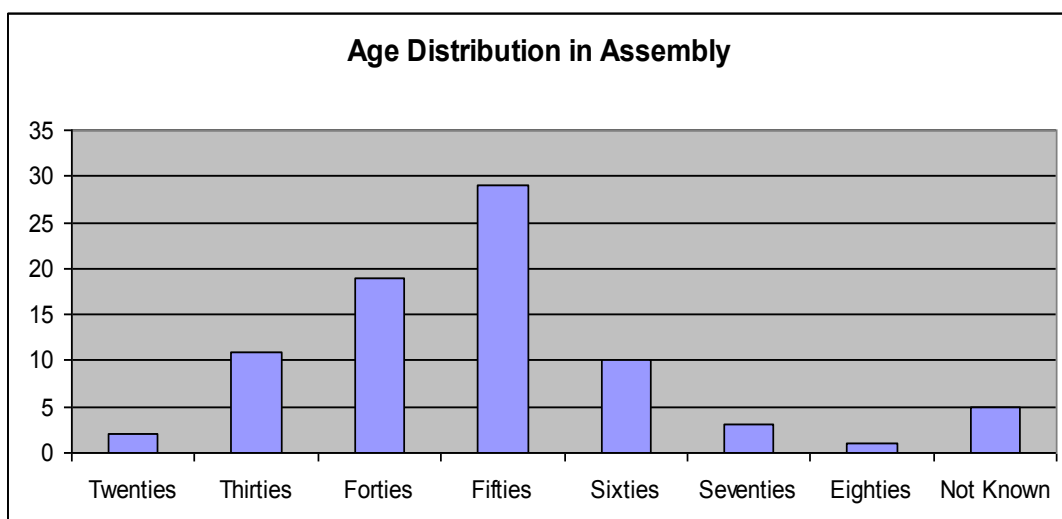


## 1.5 The Age Groups of the Members

The age groups of the members were as follows.

Ages	Number	Percentage
Twenties	2	2.50%
Thirties	11	13.75%
Forties	19	23.75%
Fifties	29	36.25%
Sixties	10	12.50%
Seventies	3	3.75%
Eighties	1	1.25%
Not Known	5	6.25%

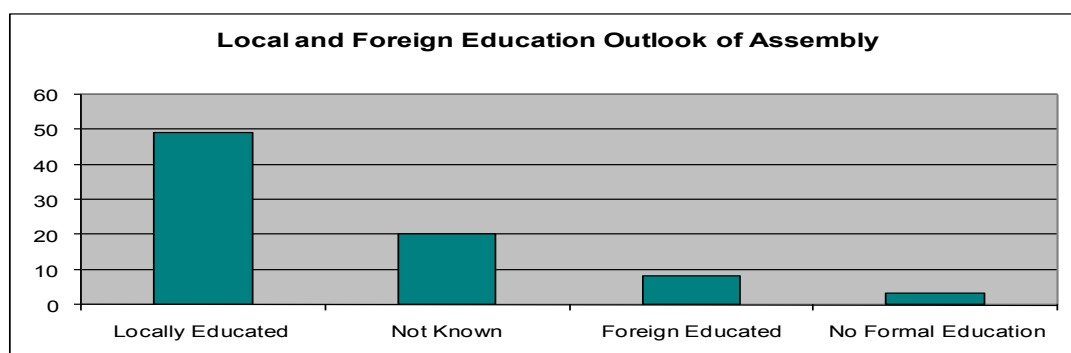
Table 5: List of members according to age groups



### 1.6 Education-Wise Outlook of Assembly

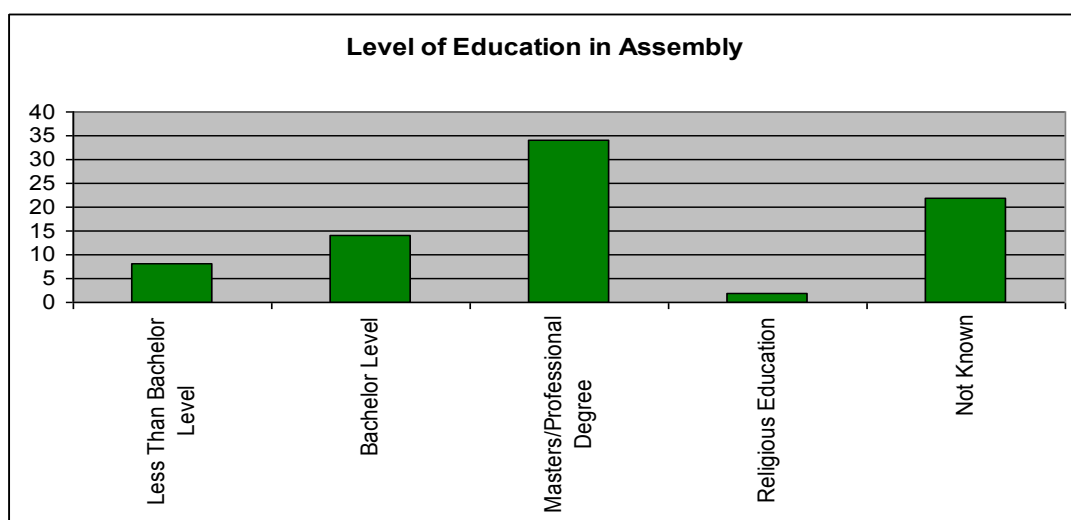
Education	Number	Percentage
Locally Educated	49	61.25%
Not Known	20	25.00%
Foreign Educated	8	10.00%
No Formal Education	3	3.75%

Table 6: List of members according to educational institutes



Education Level	Number	Percentage
Less Than Bachelor Level	8	10.00%
Bachelor Level	14	17.50%
Masters/Professional Degree	34	42.50%
Religious Education	2	2.50%
Not Known	22	27.50%

Table 7: List of members according to educational level



## 2 Participation by Members

During the general discussion phase of constitutional debate, all the members were allowed to speak freely about their ideas of constitutional design. They were only required to inform the party whips or the Speaker of their desire to make a speech and then they could express their point of view (Rule 22). However as said in the last chapter that many members were either absent or indifferent to the process because their participation was almost negligible. During the phase of general discussions we analysed the participation of members on four levels i.e.

- Members who made speeches in Assembly,
- Members who gave only meaningful remarks or short information,
- Members who only made hooting remarks and
- Members who participated in the final voting after general discussions

The participation of the members is shown below:

Members who made speeches in Assembly	32
Members who gave only meaningful remarks or short information	8
Members who only made hooting remarks	1
Members who participated in the final voting after General Discussions	58

Table 8: Members according to their participation in the constitution-making process( general phase)



It was seen that about 58 members voted in the final voting after the general discussions while only 32 had made speeches. One reason can be that most members were not linked with the machinery of government in British Rule to know the intricacies of constitutional design. Another reason can be that many members were either uneducated or their educational background was completely different from what was needed to understand the legalities of a good constitutional design. This could be the reason that lawyers participated more enthusiastically than other groups (15 out of 31 who made speeches were lawyers by profession). Yet another reason can be that many members may not have a strong interest in the process itself but only appear at the time of voting, just to maintain their loyalty with their political party.

We can also look at the total number of members participating in voting according to our general hypothesis.

Non-Interest Specific Clauses	Rule	Members Participating in Voting	Avg
Vote 1	Presidential vs Parliamentary	48	50.142
Vote 2	Presidential vs Parliamentary	56	
Vote 3	Federalism vs Unitary	42	
Vote 4	Federalism vs Unitary	50	
Vote 5	Human Rights	51	
Vote 6	Human Rights	50	
Vote 7	Human Rights	54	
Interest Specific Clauses			
Vote 1	Parity	46	58.6
Vote 2	Parity	49	
Vote 3	Islamisation Issue	69	
Vote 4	Islamisation Issue	63	
Vote 5	Electorate Issue	66	

Table 9: Members participating in the Voting Roll Calls

Another observation made is that on 21<sup>st</sup> February 1956 votings took place on 3 different clauses e.g. for clause 1 and 32 relating to Islamisation Issue and clause 153 of Joint electorate. The number of members who participated in three votes was 69, 63 and 66. This shows that the members were there on that

day but were not sitting in the assembly at the time of all three voting. Why the members decided to stay absent is an open question for which we could not find an answer.

We observe that on average the participation was more in the interest specific rules and less in the rules of general constitutional design. This brings us back to our original proposition that members are generally more focused on their self-interest and they do not participate in the constitution-making process with altruistic motives. We also observe this phenomenon operating in the general discussions as evident from Table 10 (words spoken about specific clauses in general discussions) and here in the specific discussion phase as well.

### **3 Acceptance of the Constitution**

The formal mode of accepting the constitution was the “three readings” process as described before. The idea was that members can give their opinions during debates in the assembly and also propose their own ideas in form of amendments. Theoretically this should have brought the constitution in line with the desires of most, if not all members. But in this case it was not done so. All the three readings were in essence done on the same draft. As many as 600 amendments (Pakistan Times Lahore: 1<sup>st</sup> March 1956) were proposed but in actuality only a few were accepted and those too were mostly consistent of a mere “language change” instead of giving a new meaning.

The bill was rejected by the opposition members during all the three readings of the bill. In the first discussion on the constitutional bill, opposition proposed right away that a division is called upon. This voting was done on 1st Feb 1956 (CAD, 1st Feb 1956). The motion was that the constitutional draft should be referred to a select committee for reconsideration or it should be forwarded for second and third readings. 13 members from opposition voted Yes and 45 members from government benches voted No. The bill was forwarded for next readings and was not sent back for reconsideration.

For the Constitutional Bill to be passed through second reading the opposition demanded that a division is called for again. They wanted to reject the bill. And despite knowing that majority will again strike their proposal down. They called for a division. The reason was to slow down the process so that the bill could be reconsidered again. However the ruling majority struck down the motion by 31 to 15 votes and the bill moved for a third reading.

In the last reading of the constitutional bill 16 members<sup>71</sup> walked out of the assembly showing their indignation at the constitutional plan. These members gave their comments quickly and walked out of the assembly hall. In other words rejecting the constitution through their actions. They made sure that they say something before leaving so that their rejection is recorded in the historic records properly.

The lists for all the two divisions as well as the names of the members who walked out are given in Appendix III as List I, XV and XVI.

The members who rejected the constitution had minimal issues with the basic constitutional draft and were rather more critical of the specific issues at the time of constitution-making. To make sure that a reasonably correct idea can be obtained, we counted the number of words spoken in the assembly about the issues of general constitutional design and these specific issues. The words are counted for the phase of general discussion when members had a free hand to make speeches and to express their opinion on the constitution.

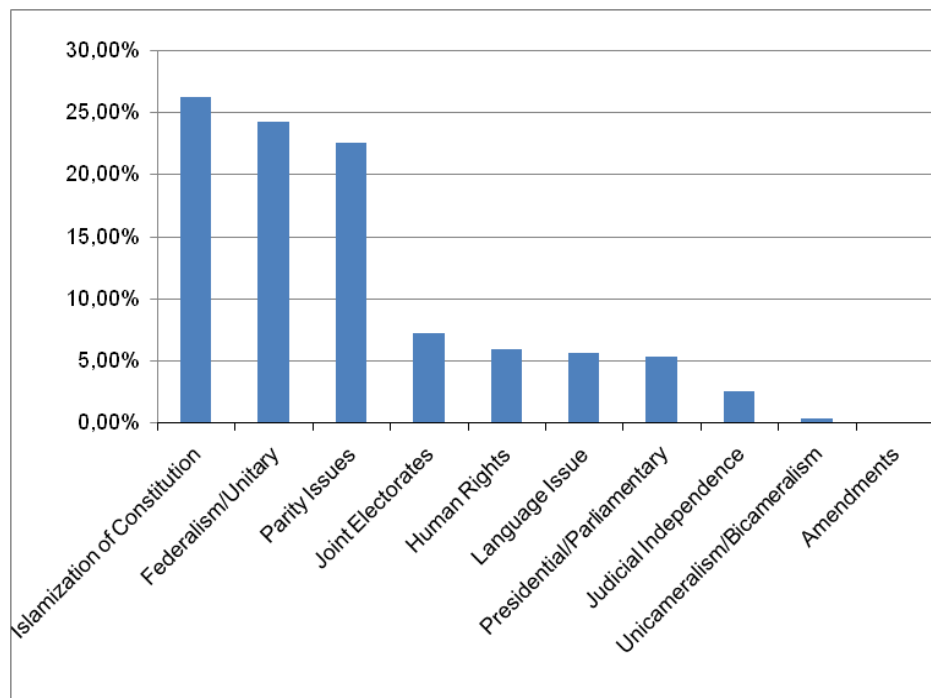
Table below shows the number of words spoken about different issues during general constitutional debate. The words spoken about other issues or non relevant topics have not been counted and the percentage is taken through sum of the words spoken about issues in focus.

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<sup>71</sup>29th Feb 1956, CAD, Names of the members were HS Suhrwardy, Ataur Rehman, Sheikh Mujib ur Rehman, Zahiruddin, Abdur Rehman Khan, Abdul Khaleque, Maulana Abdur Rashid Tarkabagish, BK Das, BK Dutta, AK Das, Canteswar Barman, Mian Iftikhar ud Din, MahmudAli, Dr SK Sen, Rasa Raj Mandal, Gour Chandra Bala.

Issue	Percentage of Words Spoken	Number of Words Spoken
Islamization of Constitution	26.20%	34244
Federalism/Unitary	24.18%	31612
Parity Issues	22.52%	29442
Joint Electorates	7.24%	9464
Human Rights	5.95%	7784
Language Issue	5.62%	7350
Presidential/Parliamentary	5.32%	6958
Judicial Independence	2.51%	3276
Unicameralism/Bicameralism	0.40%	518
Amendments	0.05%	70

Table 10: Number of words spoken according to the constitutional rules.



It is noteworthy that the issues that have been traditionally considered as a basic framework of any constitutional design have not been given reasonable importance by Pakistani politicians. It may also be true in case of other countries that while debating on the constitution the communal or local issues are given more importance than the ones which are more fundamental. Politicians may be more interested in their own self-interest as the communal and local flammable issues can be a manifesto for next elections. These politicians by representing their constituency and representing the constituency

interests are actually safeguarding their own interest i.e. to achieve a better popularity amongst the voters.

#### 4 British Influence on the Constitution

Initially it was assumed that British influence would be profoundly seen on the constitutional draft of Pakistan but a careful reading of the debates shows that instead of British constitutional design other influences were more profound. The 1935 Indian Act that was introduced by British was later adopted as the Interim Constitution in Pakistan. It was quite similar to the final constitutional draft of 1956. Similarly Indian Constitution was also taken as reference time and again in the discussions. To have a stronger idea a count was done about the number of times the members referred to these acts and constitutions in the general discussion of the constitutional draft. The following table depicts the results.

Indian Constitution	61
Indian Act of 1935	22
British Constitutional Design	4

Table 11: Number of times other constitutions mentioned in the general discussions.

As evident from the above tables, Indian constitution had a strong influence on Pakistani constitution. Speakers mentioned the Indian Constitution like a constitutional Bible, and quoted openly. Now the question itself remains if the Indian Constitution itself was influenced by British Constitution.

The reason of this may be because of the similar culture of the countries. Both countries had similar history and background so similarities were bound to exist.

Initially in chapter IV (Implications of the model) we assumed that the old aged members, foreign educated, landowners are likely to be more influenced by the British Constitutional design. Also we supposed that older members are more likely to support British Constitutional rules due to risk averse nature of the older generation in Pakistani society. The four times the constitution of Britain

was mentioned, it was done by Mr Rashdi, Abdus Salam, Dr S K Sen and KK Dutta. Their professions, age groups and educational background are given below, which do not support any of our hypotheses except in case of ages.

<b>Member</b>	<b>Profession</b>	<b>Age</b>	<b>Educational Background</b>
Pir Ali Mohammad Rashdi	Journalist	51	No formal Education
Dr S.K.Sen	Doctor	59	Local
Kamini Kumar Dutta	Lawyer	78	Local
Abdus Salam	Ex Civil Servant	Unknown	Local

Table 12: List of members quoting British Constitution.

## 5 Hypotheses Analysed

The initial layout of the research was simple: to relate the personal interests of the members to their voting behaviours and to understand the co-relation if it was found to be existent. During the data collection one major piece of data was missing rather it was never created i.e. the voing roll calls on individual clauses. Due to this there was no choice except to probe and extract the best possible research conclusions based on the available data.

What we have is the detailed list of voting roll calls on 15 different issues. So we use these roll calls and discuss the original hypotheses one by one (relating to basic constitutional designs) as well as the new issues which were seen locally in case of Pakistan during the course of data collection.

### 5.1 Presidential vs Parliamentary Structure of Government

In the preceding chapters we had generated multiple hypotheses relating to who might favor Presidential system and which member is likely to support Parliamentary system of government. We believed that if a constitution-maker has a strong political presence then he is more likely to support presidentialism.

Similarly if a constitution-maker belongs to the majority (ethnic, political, religious, linguistic), he will most probably support presidentialism.

On the other hand the members who belong to the minority groups, (be it ethnic, political, religious, linguistic minority) will most probably support parliamentary system. Also a member, who belongs to religious interest groups or Ulema groups, is likely to vote for parliamentary system.

Also through other arguments given previously we assumed that members from older age group and landowners group are likely to vote for parliamentary system<sup>72</sup>. We had assumed also that foreign or local education is not likely to create any influences in case of structure of government.

In light of these conjectures we tried to find some data that could help in confirming or refuting the hypotheses. The articles that term the governments as a parliamentary democracy were not voted on though the process of division<sup>73</sup> therefore reasonable results cannot be drawn from these articles.

However there were some other articles which were finalized through divisions. This could be used in relevance to our study. As discussed previously, in the Pakistani Constitution-making the issue was not to have a presidential or parliamentary system because there seemed to be already a consensus upon the system itself. However the contentions arose when it was to be decided how much power the president should wield. Some people wanted to increase the sphere of action of presidential powers while others wanted to curtail them. Assuming these two groups as Presidentialists and Parliamentariasts we can make a table of expected voing behaviour according to our initial hypotheses:

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<sup>72</sup> Initially we assumed that women members would also vote for parliamentary system but we saw that there was not even a single woman member in the assembly so it will not be possible to see the effect of gender on the constitutional choice of structure of the government in case of Pakistan.

<sup>73</sup> Articles: 1, 32, 43 of Constitution of Pakistan 1956.

<b>Presidential</b>	<b>Parliamentary</b>
Ethnic Majority Linguistic Majority Political Majority Religious Majority Strong Members/Party Leaders	Ethnic Minority Linguistic Minority Political Minority Religious Minority Common members Ulema Older Age Group Landowners

Table 13: Table of expected voting behavior regarding structure of government

### 5.1.1 Vote I

The clause 201 was relevant to this issue, more specifically its sub-clause (1)(CAD, 9th Feb, 1956). This clause related to the emergency provisions. In case of any disturbance the President and the central government were allowed to declare emergency and to intervene in provincial affairs. Opposition wanted to maintain a limit on this intervention by demanding to insert the words that this can only be done in case of war, external aggression and armed rebellion. This would at least limit the central government to some extent that emergency provisions are not invoked unnecessarily. The final article of the constitution (191) allowed the President to invoke emergency powers in case of economic disturbance, security of Pakistan, internal disturbance, and also in a situation that became beyond the control of provincial government. These vague sentences automatically led to vast powers as the interpretation could be manipulated. This is why the opposition only wanted to curtail this power to only cases of war, external aggression or armed rebellion and not internal disturbances.

This demand by opposition was also turned down by 14:34 and the voting list is given in Appendix III. Analysing the voting result for the Vote I in context of our hypotheses, we come to the following numbers.



<b>Attribute</b>	<b>Total</b>	<b>Presidential</b>	<b>Parliamentary</b>	<b>Abstained from Voting</b>
Ethnic Majority	61	22	14	25
Linguistic Majority	61	22	14	25
Political Majority	56	34	3	19
Religious Majority	69	32	11	26
Strong Members/Party Leaders	26	13	2	11
Ulema	5	2	1	2
Older Age Group (50+)	43	19	6	18
Landowners	23	13	1	9
Ethnic Minority	19	2	3	14
Linguistic Minority	19	12	0	7
Political Minority	24	0	11	13
Religious Minority	11	2	3	6

Table 14: Hypotheses analysed (Vote I) regarding structure of government.

### 5.1.2 Vote II

Another list of the voting roll call is also available in regards to powers of President. It was the clause 33 of constitutional bill which gave the President the insulation (termed as immunity in Pakistani constitution) regarding his election (CAD, 20<sup>th</sup> Feb, 1956). The clause ensured that the election of President and Vice President was to be conclusive and not to be challenged in any court of law. The members (mainly opposition) who wanted to curtail presidential powers voted in opposition, because they thought that this kind of immunity will increase the control of President over the parliament and the elected governments. Opposition lost this vote by 18 to 38 votes. The list of the members present and voting is given in Appendix III.

The members are here again show as presidentialists and parliamentariasts.

Attribute	Total	Presidential	Parliamentary	Abstained from Voting
Ethnic Majority	61	23	18	20
Linguistic Majority	61	23	18	20
Political Majority	56	34	13	9
Religious Majority	69	34	14	21
Strong Members/Party Leaders	26	14	5	7
Ulema	5	1	1	3
Older Age Group (50+)	43	23	9	11
Landowners	23	14	0	9
Ethnic Minority	19	15	0	4
Linguistic Minority	19	15	0	4
Political Minority	24	4	5	15
Religious Minority	11	4	4	3

Table 15: Hypotheses analysed (Vote II) regarding structure of government.

By looking at the results of voting roll calls on the above two votes one may question why so many people chose to abstain? Were they protesting anything? It was a puzzle to see these many numbers as missing in the final discussions of the assembly. We tried to read through the archival materials and discussions but could find no clue as to why the members could not ensure that they sit through the votings and participate. One thing we can say for sure that it was not a protest or a planned abstainence as no where the newspapers or assembly discussions mention this except for the last day when the members actually walked out protesting the constitutional bill in total. Also the finance department was contacted to check which member was actually being paid that day to participate but the data was not available.

As seen from the two votes above regarding the presidential and parliamentary system of government, we draw some conclusion. As regards to the initial

hypotheses we thought that majorities (ethnic, linguistic, religious, political) will be more inclined towards Presidential systems. This was seen to be considerably true in case of ethnic, linguistic and political majorities. Also in case of religious majority the ratio of presidential vs. parliamentary votes were seen as the approximate ratio 3:1 for Vote I and 2:1 for Vote II.

Similarly for all the other attributes we see the following ratios.

<b>Dependent Variable</b>	<b>Independent Variables</b>	<b>Ratio Presidential vs Parliamentary (Vote I)</b>	<b>Ratio Presidential vs Parliamentary (Vote II)</b>
<b>Presidential</b>	Ethnic Majority	3:2	4:3
	Linguistic Majority	3:2	4:3
	Political Majority	11:1	3:1
	Religious Majority	3:1	2:1
	Strong Members/Party Leaders	6:1	3:1
<b>Parliamentary</b>	Ulema	2:1	1:1
	Older Age Group (50+)	3:1	3:1
	Landowners	13:1	14:0
	Ethnic Minority	2:3	15:0
	Linguistic Minority	12:0	15:0
	Political Minority	0:11	4:5
	Religious Minority	2:3	1:1

Table 16: Hypotheses analysed regarding structure of government: Final.

Calculation of these ratios was done by using only the members “present and voting” and the assumptions about the absent members were not made as it was not possible with the available data. We see from the above tables that our initial hypothesis about the majorities and strong members wanting the Presidential system are found to be quite consistent.

On the other hand the hypotheses about the minorities, older aged members, landowners and Ulema choosing the Parliamentary system are found to be correct only in case of political minority and to some extent religious minorities.

We conclude from our research and the analysis of the above two votes, that the majorities who think that their position is considerably stronger at the time of constitution-making and expect that this strength will remain stable for quite a reasonable length of time, prefer to opt for a presidential system of government. The reason, we perceive, is that they would expect to have a stronger hold on executive authority in case of the presidential system. While in case of parliamentary system the parliament holds more power and the executive authority is subject to the will of several persons (depending on the number of members in assembly). In contrast to this if a President would belong to their interest group there is a greater opportunity to wield power according to their own interest. The same self-interest urges the strong political leaders and political party heads to choose the presidential system and not the parliamentary system as they did in case of Pakistan.

On a similar note we proposed that minorities should support Parliamentary system because in such a system they would expect their smaller interest groups to carry more weight than in the Presidential system. This hypothesis seemed to hold true only in case of political minority and religious minority, two very important interest groups. We believe that the reason for seeing these results is because in case of Pakistan's assembly the interest groups that were most efficiently organised were religious and political. These groups showed most bonding to each other and their pressure affected the process of constitution-making in a very strong manner. These two groups were the most organised and the most effective and had the source of bonding at an ideological level. They disturbed and dominated all the other affiliations and bondings that were present but could not manifest themselves in a much defined manner. The reason could be that a member's political and religious affiliations were naturally a public matter in a community of Pakistan of 1956. While the other affiliations like belonging to religious groups of Ulema or owning lands were subtle matters. Thus to openly go against the political party desires or religious desires of the group was not a simple thing to do. The order of affiliations for a member was his political and religious affiliations first and ethnic and others later. In our opinion built on a general reading of the archival material (assembly discussions, newspapers and journals of the time) political

party affiliation was the most dominating effect and modified the behaviour of every member accordingly.

We also expected the foreign educated people, landlords and older aged members to support parliamentary system because of their preference to British systems. As shown before, British constitution had the least influence on Pakistani Constitution. Thus it seems reasonable that these members did not act the way we expected.

In the end, Pakistani constitution-makers came up with a system that was Parliamentary in nomenclature but had quite a strong President. The majority political party wanted to give vast powers to the President and succeeded in doing so by easily winning all the votings on the issue. India had a tradition of having Mogul emperors, then British Viceroy and later on Governor Generals. This tradition continued in Pakistan with a very powerful President in a Parliamentary system of government.

## **5.2 Federalism vs. Unitary form of government**

For the system of government the problem was not of deciding if it is going to be a federal system or a unitary system of government rather the problem arose when the devolution of powers to the provinces were to be decided. At the time of constitution-making when constitution-makers had to decide how the legislative powers are to be divided between the centre and the provinces there were major discussions on the issue (CAD, Jan-Feb 1956). As shown previously 24.18% of the words spoken about multiple issues were spoken about the distribution of powers between the center and the provinces.

There were some members who were proponent of a strong center bordering on to almost a unitary system and the others who wanted a weak center with maximum devolution of powers to the provinces. We call the formers “Centralists” and the latter “Provincialists”. Expected voting behaviour according to hypotheses is tabulated here:

<b>Federalism</b>	<b>Unitary</b>
Members from Rich States	Older Age Group Landowners Foreign Educated Religious Ulema

Table 17: Table of expected voting behavior regarding system of government

For this constitutional rule we were able to find two voting lists that could serve our purpose to some extent.

### 5.2.1 Vote I

The sub-clause (3) of clause 122 was decided by voting through division. The opposition demanded that the executive authority of federation should be curtailed in provinces and a clause is included to that effect. This motion was also turned down by ruling party by 9 to 33 votes (CAD, 8th Feb 1956).

<b>Attribute</b>	<b>Total</b>	<b>Federalism</b>	<b>Unitary system</b>	<b>Abstained from Voting</b>
Members from Rich States	62	9	23	30
Older Age Group (50+)	43	4	20	19
Landowners	23	1	9	13
Foreign Educated	8	0	2	6
Religious Ulema	5	1	1	3

Table 18: Hypotheses analysed (Vote I) regarding system of government

### 5.2.2 Vote II.

Second vote conducted in this context was over the 5<sup>th</sup> Schedule that contained the federal list of subjects. This relates to the powers of the centre and whether the centre should be powerful or not. The opposition opposed the bill and wanted that the federation should only have only 3 subjects however this was also struck down by 33 to 18 votes (CAD, 16<sup>th</sup> Feb, 1956).

<b>Attribute</b>	<b>Total</b>	<b>Federalism</b>	<b>Unitary system</b>	<b>Abstained from Voting</b>
Members from Rich States	62	18	21	23
Older Age Group (50+)	43	10	18	15
Landowners	23	1	8	14
Foreign Educated	8	1	2	5
Religious Ulema	5	1	0	4

Table 19: Hypotheses analysed (Vote II) regarding system of government

According to our original hypotheses, we had predicted that members from rich states are more likely to vote for a weaker center while older age group, landowners, foreign educated and Religious ulema are likely to vote for a stronger federation bordering on almost unitary system.

Now making a comparison of the two votes and getting a concluding idea we analyse the following table (as before we omit the absent members out of the ratios for the reasons mentioned before i.e. for the lack of data we are unable to predict their stance in this choice of constitutional rule).

<b>Dependent Variable</b>	<b>Independent Variables</b>	<b>Ratio Unitary vs Federal (Vote I)</b>	<b>Ratio Unitary vs Federal (Vote II)</b>
<b>Unitary System</b>	Older Age Group (50+)	5:1	9:5
	Landowners	9:1	8:1
	Foreign Educated	2:0	2:1
	Religious Ulema	1:1	0:1
<b>Federal System</b>	Members from Rich States	8:3	3:1

Table 20: Hypotheses analysed regarding system of government: Final

Our initial hypotheses prove to be quite consistent in case of older age groups, landowners and foreign educated who tend to favour Unitary system as expected. While not so much in case of Ulema who prefer the federal system in contrast to our initial hypothesis.

The members from rich states also behave inconsistently with our initial hypothesis as we supposed they will be favoring federal system and not unitary system.

Even when we see that our hypotheses seem to hold true in case of older age groups, landowners and foreign educated we believe that this observation is not because of the British influence as suggested in Chapter IV. As British influence was not seen to be so profound in the constitution-making process as the Indian so we do not believe that British influence would have caused these hypotheses to hold true. We believe that the political party and religious affiliations were responsible for these observations both where hypotheses hold true (older age groups, landowners and foreign educated) or where they donot (Ulema, members from rich states). As mentioned before, political and religious affiliations stood first in order of the preferences in case of Pakistan's constitutional assembly members of 1956. All other attributes for which we made assumptions in case of this constitutional rule (older age groups, landowners and foreign educated, Ulema, members from rich states), come only secondary to religion and political party affiliations.

The political parties which were in majority i.e. Muslim League and United Front wanted to keep a Federal form of government but with very limited powers to the provinces. This is why we saw a Federal system that deviated from other federations of the world. The reasons for this were many as we have already discussed in detail but it is only natural that the final draft reflected the wishes of the majority party. No other option could have survived the majority voting process against the will of Muslim League and United Front.

### **5.3 Bicameralism**

The number of Houses of the National assembly in Pakistan was decided in the Establishment of West Pakistan Bill in 1955 (Khan, 2009, 92). This Bill was introduced to solve the issue of Parity and to bring the two wings of the country at par with each other. A single House of National Assembly was then



introduced that had 300 seats. 150 members were chosen from each wing and East and West Pakistan were given equal representation.

During the discussions in the constitutional assembly this constitutional rule was given almost negligible importance. The reason could be that it was a pre-decided issue and the arguments were already exhausted by the members. As we know from previous discussions, only 518 words were spoken on this topic in the general discussion of the assembly which were less than 1% of the words spoken on the constitutional rules in the constituent assembly.

Since there was no detailed discussion on the topic and no voting roll call is available, a testing of the hypotheses can not be done owing to the lack of data.

#### **5.4 Judicial Independence**

We had assumed that majorities would want to curtail judicial independence as much as possible for them without losing face in public.

During the general discussions in the assembly only 3276 words were spoken about structure or independence of the judiciary. These words are hardly 2.5% of the total words that were spoken in the assembly for multiple constitutional rules in the general discussions phase.

Voigt and Hayo in their paper “Explaining de Facto Judicial Independence” (Hayo & Voigt, 2007) empirically show that Judicial Independence in letter would be different from the independence actually provided to the judiciary in any society. However the actual status of the judiciary would heavily rely upon the legislation regarding the issue. They conclude that 5 variables are important in determining the level of the independence that the judicial system enjoys in a society. These factors are the laws and the legislations, parliamentary democracies, political instability, per capita income and the level of confidence of people on their legal system (Hayo & Voigt, 2007).

In case of Pakistan there was political instability as well as parliamentary democracy playing a role however even then the constitution makers in general were reluctant to touch the subject of Judicial Independence. They talked about general issues that the judges should be made independent but no one was able to provide any concrete ideas as how to do this. We found no voting roll call on this issue, which makes the hypotheses testing not possible.

## **5.5 Procedures for Amendments**

The procedures of amending the constitution were not discussed in great detail in the constitutional assembly of Pakistan. Only one or two members gave some passing remarks. The number of words spoken were approximately only 70 in the general discussions phase accounting for less than 0.1%. The sitting Prime minister (and the leader of house) just mentions that he wanted to keep the amendment process simple so that the constitution becomes flexible and can be changed according to the desires of the later assemblies (CAD 17th February 1956).

Our initial hypotheses that members belonging to the majority (ethnic, political, linguistic, religious) are likely to vote for stringent amendment rules and vice versa with minorities, can not be empirically tested for the want of further data.

## **5.6 Human Rights**

As predicted that, verbally almost no member can be expected to support the Human Rights curtailment. Similar to the case of de Facto Judicial Independence, the de Facto Human Rights status can be far different from that what the Constitutions or the relevant laws grant.

But similar to the case of Judicial Independence, Human Rights clauses were not entirely welcomed by all the members and many were not willing to provide too many rights constitutionally.

For the Human Rights situation we have 3 voting roll calls.

### 5.6.1 Vote I:

The first available list of voting roll call related to Fundamental Rights was the clause 10 of the Constitution (CAD, 4<sup>th</sup> Feb 1956). It allowed freedom of association subject to any restrictions imposed by the law of the country. The opposition's demand was that a word "reasonable" be inserted so that the restrictions are not subject to the whims of the ruling parties. The difference that word "reasonable" would have brought is itself debatable, because the interpretation of such a vague word is itself subject to many different viewpoints. However one could sense the intensity of this demand while reading the debates.

It seemed like that the opposition only wanted to show their indignation as stated by their leader Mr H S Suhrawardy (CAD 4th Feb 1956). This motion was also turned down by 16 to 35 votes. However in the final draft available today in the archives shows the word reasonable in article 10 of constitution of 1956. This must have come before the third reading when the government benches kept meeting with the opposition for approval of constitutional draft.

The detailed voting is given in the appendix III, however an overview in tabular form is provided:

<b>Attribute</b>	<b>Total</b>	<b>Narrow HR</b>	<b>Broad HR</b>	<b>Abstained from Voting</b>
Ethnic Majority	61	23	16	22
Linguistic Majority	61	23	16	22
Political Majority	56	30	4	22
Religious Majority	69	28	12	29
Ethnic Minority	19	12	0	7
Linguistic Minority	19	12	0	7
Political Minority	24	5	12	7
Religious Minority	11	5	4	2

Table 21: Hypotheses analysed (Vote I) regarding Human Rights

### 5.6.2 Vote II:

Next division came in second reading of the bill about fundamental rights. It was the clause 7 which dealt with human rights (CAD, 13th Feb, 1956). Opposition wanted that surety is given in the constitution that no man is detained without trial except in case of an enemy alien. However this constitutional protection was also refused by 15:35 votes.

The detail is as follows:

Attribute	Total	Narrow HR	Broad HR	Abstained from Voting
Ethnic Majority	61	20	15	26
Linguistic Majority	61	20	15	26
Political Majority	56	33	4	19
Religious Majority	69	32	11	26
Ethnic Minority	19	15	0	4
Linguistic Minority	19	15	0	4
Political Minority	24	2	11	11
Religious Minority	11	3	4	4

Table 22: Hypotheses analysed (Vote II) regarding Human Rights

### 5.6.3 Vote III:

The next division was again done in second reading of the constitutional bill. It related to clause 15 of the bill. As previously mentioned, Clause 15 related to the property rights/fundamental rights (CAD, 14 Feb, 1956). It allowed the State to confiscate bigger landholdings with or without compensating for it. A move like this would have improved not only the distribution of income but also would have created new jobs because many lands were left uncultivated by the bigger landlords. However many of the members called it against the fundamental right of owning personal property and opposed it. The clause could not pass because a great majority of members were landlords and they opposed the clause. This motion was negated by 15 to 39.

Superficially it may seem to be a Human Rights clause where people are allowed/not allowed to keep personal property, but closely observing the clause is imperative in a broader sense. Landlord system is an issue for Pakistani

society even today and was in 1956 also. Landlord system is considered by many as unfair towards farmer who basically brings in the income from crops (Gazdar, 2009). But since he is not the owner and rather simply a worker, he is only getting a very negligible sustenance from his hard work. Most of the times these farmers do not have a social standing which is equal or comparable to the landlord. The landlord has usually a high social influence on the farmers who then vote according to what their landlord says. This influence brings many of these landlords to politics resulting in them gaining even more power. This problem was addressed in East Pakistan where bigger landlords were forced to give up much land (CAD, 21<sup>st</sup> Jan, 1956). The East Pakistan members wanted the same for West Pakistan and wanted the constitution to take these lands without compensation.

This clause was tricky on one hand that it would have kept a few members of society to give up their large landholding while at the same time emancipating many others. So on one hand it may seem like that this clause is curtailing fundamental right of owning property but on the other hand it was providing rights to tenants e.g. right to get an education, right to vote independently, right to marry freely, right to look for an employment and so on. However it was never granted and landlord system is prevalent in Pakistan even today. The voting detail for this vote is as follows:

Attribute	Total	Narrow HR	Broader HR	Abstained from Voting
Ethnic Majority	61	22	15	24
Linguistic Majority	61	22	15	24
Political Majority	56	34	5	17
Religious Majority	69	35	10	24
Ethnic Minority	19	17	0	2
Linguistic Minority	19	17	0	2
Political Minority	24	5	10	9
Religious Minority	11	4	5	2

Table 23: Hypotheses analysed (Vote III) regarding Human Rights

The combined voting results for all the three votes are given below for comparison (omitting the absences as before).

Dependent Variable	Independent Variables	Ratio Broad:Narrow (Vote I)	Ratio Broad:Narrow (Vote I)	Ratio Broad:Narrow (Vote III)
<b>Narrower Human Rights</b>	<b>Ethnic Majority</b>	2:3	3:4	3:4
	<b>Linguistic Majority</b>	2:3	3:4	3:4
	<b>Political Majority</b>	1:7	1:6	1:7
	<b>Religious Majority</b>	1:2	1:3	1:3
<b>Broader Human Rights</b>	<b>Ethnic Minority</b>	0:12	0:15	0:17
	<b>Linguistic Minority</b>	0:12	0:15	0:17
	<b>Political Minority</b>	2:1	5:1	2:1
	<b>Religious Minority</b>	4:5	4:3	5:4

Table 24: Hypotheses analysed regarding Human Rights: Final

We observe from the above ratios that our hypotheses that majorities (ethnic, linguistic, political and religious) will try to curtail human rights for others were confirmed. Similarly we assumed that minorities will opt for broader human rights which were supplemented by results in case of political and religious minorities but were not supported by empirical analysis in case of ethnic minority and linguistic minority.

As we see in the above tables the majorities mostly tried to curtail broader human rights while minorities behave otherwise (except for ethnic and linguistic). We believe that majorities which expect to remain in power for a long time donot want to provide unlimited human rights specially freedom of speech, freedom of association, freedom of press and so on<sup>74</sup>. On the opposite the minorities wanted to have this freedom to make their voices heard.

We believe that most of these results are seen under the strong influence of political party and religious interest groups. We donot see the ethnic minorities to behave as expected because they were in majority political party and voted according to this affiliation and not their ethnic affiliations.

## **6 The Issues Most Discussed in the Assembly**

Now we come to the issues which brought most heated debates in the Constitutional Assembly of 1956.

### **6.1 Parity Issue**

This issue gained importance right after the Independence of Pakistan. As soon as Pakistanis separated from British dominance and Hindu majority, they started fearing that one or the other group might establish unwanted dominance over them. This is why almost all the ethnic religious and linguistic groups became very apprehensive. The most bitter and prominent friction became apparent between East and West Pakistan. Their reconciliation seemed as difficult as bridging the geographical distance amongst them. As said previously there were issues regarding the fact that there were differences in their population, cultures, economic stability and so on. The major issue was to somehow reconcile this difference as far as national assembly and parliament was concerned. This issue was the second most discussed and 29442 words were spoken about this issue in the general discussion. This was about 22.52 %

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<sup>74</sup> This is something we noted during the constitution-making process as the members were not able to demonstrate secular beliefs or provincial feelings because of the fear of offending the common masses.

of all the words spoken about constitutional rules in the general discussion phase.

The voting roll calls available in this context are two and are given below. Since we had not established any hypotheses on interest-specific clauses considering them to be pretty straight forward we can have only a general look at the voting details.

### 6.1.1 Vote I

Voting roll call is available for Clause 17 which was related to the appointments in federal and government services (CAD, 6<sup>th</sup> Feb, 1956). In this the opposition desired to have the clause inserted that in all services the number of appointees will be the same from both East and West Pakistan. This amendment was turned down by 12 to 34 votes. The detailed analysis is as below:

Attribute	Total	Members demanding equality	Members Against	Abstained from Voting
East Pakistan	40	12	17	11
West Pakistan	40	0	17	23
Ethnic Majority	61	12	24	25
Linguistic Majority	61	12	24	25
Political Majority	56	0	30	26
Religious Majority	69	12	29	28
Strong Members/Party Leaders	26	2	15	9
Ulema	5	1	3	1
Older Age Group (50+)	43	5	18	20
Landowners	23	1	8	14
Ethnic Minority	19	0	10	9
Linguistic Minority	19	0	10	9
Political Minority	24	12	4	8
Religious Minority	11	0	5	6

Table 25: Vote I regarding Parity.



The parity meant equality of East and West Pakistan and ideally one should have seen that all the East Pakistan members would have asked for this parity but again in the voting roll calls we see that East Pakistan members against this demand were more than the members actually asking for it (17:12). On the other hand in West Pakistan no member agreed to provide parity to the East Pakistanis in the constitution.

Out of 34 members who said “No”, 30 were from ruling coalition and 14 of these 30 were from East Pakistan. The reason can be that either the political party pressure was so intense that the East Pakistani members who were in government’s coalition party chose to either abstain from voting or chose to say “No”. But again who were the 4 members who were not part of political majority but were against the parity anyway. These were 3 members<sup>75</sup> from Hindu community (schedule castes) and one independent member from West Pakistan. This shows that apart from usual political pressure that was evident in all the voting roll calls before there could be a possibility that the parity issues may not be as profound as the political minorities portrayed them. 17 East Pakistan members voting against parity can also mean that the issue could be more of a political slogan and less of an actual problem.

### **6.1.2 Vote II**

Voting details are also available for Clause 31 which again related to services in Pakistan (CAD, 7<sup>th</sup> Feb, 1956). Opposition wanted that for all government services parity should be maintained between employees from East and West Pakistan and the government should make sure that this is done promptly. This motion was also rejected by the government benches and turned down by 34 to 15 votes.

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<sup>75</sup> Gour Chandra Bala, Akshay Kumar Das, Rasa Raj Mandal, Mir Balakh Sher Mazari

<b>Attribute</b>	<b>Total</b>	<b>Members demanding equality</b>	<b>Members Against</b>	<b>Abstained from Voting</b>
East Pakistan	40	15	14	11
West Pakistan	40	0	20	20
Ethnic Majority	61	15	24	22
Linguistic Majority	61	15	24	22
Political Majority	56	3	31	22
Religious Majority	69	12	30	27
Strong Members/Party Leaders	26	2	13	11
Ulema	5	1	3	1
Older Age Group (50+)	43	7	18	18
Landowners	23	1	12	10
Ethnic Minority	19	0	10	9
Linguistic Minority	19	0	10	9
Political Minority	24	12	3	9
Religious Minority	11	3	4	4

Table 26: Vote II regarding Parity.

Again looking at the voting details, out of 34 members who were against the parity, 3 were from political minority (2 Hindus from East Pakistan and 1 independent from West Pakistan). On one hand the 14 members from East Pakistan saying “No” can be explained on the basis of political affiliations and the pressures. Or the two members from minority parties (East Pakistan) may show that the issue may not be as problematic as it was shown.

This brings to light another important aspect of constitution-making. The open debates in the constitutional assembly that are reported on day to day basis by the media can be troublesome at two levels, first that the members can be forced to suppress their opinions (on religious, communal, ethnic levels) because of the fear of offending the public. As these members are usually political figures (as in case of Pakistan) and can not afford to lose votes from

their constituencies. And the second level is that they may exaggerate issues to mobilize public support and create issues out of non-issues. Both these factors may influence the constitution-making process as they did in case of Pakistan.

## **6.2 The Language Issues**

The next issue which was emphasized by the members again and again was the language issue. The members from East Pakistan were demanding that both Urdu and Bengali should be considered as State Languages (Article 214 of Constitution of 1956).

This demand was finally accepted and Bengali and the Urdu both were designated as State languages while English was chosen as the official language for a fixed time period<sup>76</sup>. This demand of the opposition was thus accepted and fulfilled. There was no voting done through division on this clause so no voting roll call is available but 5.62 % of the words were spoken about this issue in general discussion of the constitution. Absence of voting roll call for this issue is surprising as a lot of time of assembly was used to discuss this issue.

## **6.3 Islamization of the Constitution**

This topic was also heatedly discussed by many members in the assembly. Most members were Muslims so they demanded and talked about an Islamic system of the Government. The Islamisation of the constitution did not exactly relate to Islamic system but was only used as a flammable issue as no member gave a precise definition of what he wanted.

During hypotheses-generation Islamisation factor was expected to be seen in the constitution. Most members in general were assumed to favour Islamisation

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<sup>76</sup> No detail is seen during the constitutional debates as to what and why it was done. However most historians quote that this was done as a transitional step until Urdu could be fully applied as the official language. Till today the official language is English despite the fact that current constitution of Pakistan (1973) only allowed it to be the official language for 15 years “until arrangements are made for its replacement by Urdu” (Article 251(2)).

of the constitution, and Islamic interest groups were expected to play an important role. Especially Ulema/scholars were anticipated to manipulate the fellow members in the name of religion (a factor prevalent even today and especially pronounced in those times when independence was gained for Muslim majority areas in the name of the religion). As most other members were also Muslims so they could be made to act accordingly because of public and peer pressure.

The two controversial clauses were the name of the country and the criteria to become President. The name of the country was chosen to be Islamic Republic of Pakistan and only a Muslim was allowed to be President. This would not have mattered in any case because much of the population was Muslim and chances of a non-Muslim becoming a president were quite bleak. Despite this the issue remained quite troublesome in the assembly. Not only the non-Muslim members were unhappy about these conditions but also many Muslim members sided with the non-Muslim members. Despite their utmost efforts these provisions were not removed from the constitution and were accepted as such. In the 3<sup>rd</sup> reading of the constitutional bill the non-Muslim members walked out in protest against these provisions (CAD, 29<sup>th</sup> Feb, 1956).

There are two voting roll calls available in this context.

### **6.3.1 Vote I**

The next available roll call was about Clause 1 of the constitution which related to the name and territories of Pakistan (CAD, 21st Feb, 1956). The opposition wanted to oppose this clause because of the objection on the name of the country being Islamic Republic of Pakistan. The opposition members and almost all the non-Muslim members opposed the clause because of the word Islamic. However this clause was passed by ruling party by 47 to 22 votes.

<b>Attribute</b>	<b>Total</b>	<b>Yes</b>	<b>No</b>	<b>Abstained from Voting</b>
Religious Majority	69	12	29	28
Religious Minority	11	0	9	2
Ethnic Majority	61	12	24	25
Linguistic Majority	61	12	24	25
Political Majority	56	0	30	26
Strong Members/Party Leaders	26	2	15	9
Ulema	5	1	3	1
Older Age Group (50+)	43	5	18	20
Landowners	23	1	8	14
Ethnic Minority	19	0	10	9
Linguistic Minority	19	0	10	9
Political Minority	24	12	4	8

Table 27: Vote I regarding Islamisation of Constitution.

### 6.3.2 Vote II

The next division was about a similar provision. This was about the Islamic provisions of the constitution. The clause was 32<sup>nd</sup> in number and talked about the qualification of a member to become president (CAD, 21st Feb, 1956). Along with other factors like being at least 40 years of age and eligible to be a member of National Assembly. The President had to be a Muslim. Many members had reservations regarding the President being Muslim only. Some members had the objection that this was against fundamental rights that non-Muslim members were debarred from becoming a President. Many non-Muslim members as well as Muslim members were against this qualification. However the clause was passed by 43 votes in favour and 20 against.

<b>Attribute</b>	<b>Total</b>	<b>No</b>	<b>Yes</b>	<b>Abstained from Voting</b>
Religious Majority	69	12	43	14
Religious Minority	11	0	8	3
Ethnic Majority	61	20	27	14
Linguistic Majority	61	20	27	14
Political Majority	56	5	40	11
Strong Members/Party Leaders	26	6	13	7
Ulema	5	1	3	0
Older Age Group (50+)	43	10	23	10
Landowners	23	1	16	6
Ethnic Minority	19	0	16	3
Linguistic Minority	19	0	16	3
Political Minority	24	15	3	6

Table 28: Vote II regarding Islamisation of Constitution.

As in case of Parity it was important to compare the behavior of members of East and West Pakistan. Similarly in case of Islamisation of constitution it is important to see the role of religious affiliations.

As we see in both the above mentioned votes the Religious minorities wanted that this discrimination should not be allowed constitutionally. On the other hand the religious interest groups wanted to keep the balance of power in their own hands. Also if we see the group of Ulema only one person voted “No” (Moulana Abdur Rashid Tarkabagish) who was member of Awami League, the opposition party. The interesting thing is that the country had Muslim community as an almost complete majority and in the circumstances it was very difficult that a non-Muslim could ever become a President. But despite that both sides wanted to keep their side stronger and wanted to use these provisions to further their own interests.

The non-Muslim members who were abstaining (2 and 3 for Vote I and Vote II respectively) can be traced to some extent<sup>77</sup>. As some members walked out on the last session of constitutional assembly we could check if these three also walked out but they did not. These three members were from ruling coalition/majority party and it shows again that political pressure was quite profound and these people chose to abstain instead of going against their own political party.

#### **6.4 Joint Electorates**

This issue was again raised by the non-Muslim members, and Muslim members of the opposition stood shoulder to shoulder with them.

Separate electorate was introduced by the British rule. This meant that for the non-Muslim seats in assembly only a non-Muslim member could be the candidate or the voter. In British rule this was introduced to protect minorities and to make sure that the minorities will be returned to the assembly. This insured the proper representation of the minority in the assembly.

In case of Pakistan the constitution allowed separate electorates for the non-Muslims. This became an issue because non-Muslim members felt that that they have been segregated and driven away from the national political system (CAD, 28<sup>th</sup> Jan, 1956). They demanded that they should be allowed to vote and contest election along with the general population. They stated that even if joint electorate worsens their chances of being returned to the assembly they would take the chance in the name of national integration.

On the other hand many orthodox Muslim believed that Pakistan was claimed to be created for Muslim minority and if non-Muslims were integrated in the society so openly then the concept of 'getting a homeland for Muslims' will be lost. They wanted that the non-Muslim Minority is allowed only separate electorates (CAD, 23<sup>rd</sup> Jan, 1956). This issue became so problematic that even by the time constitution was approved and finalized; this issue could not be

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<sup>77</sup> CE Gibbon, Siroomal Kirpaldas for Vote I and Vote II, and Kamini Kumar Dutta for Vote I.

reconciled. The ruling majority simply took out the election /electorate rules and left it as a policy choice.

This is how a constitution was formed which had a pretty unique structure of a uni-cameral federation and no electoral rules. There is a single voting roll call available for this rule.

#### **6.4.1 Vote I**

The next voting roll call is available for clause 153 (available as article 145 in the final draft). This related to principles of electorates (CAD, 21st Feb, 1956). The constitution advised that elections maybe held on basis of joint or separate electorates according to wishes of National and Provincial assemblies. However the members of opposition wanted that joint electorates should be prescribed by the Constitution. In the end the constitution stayed vague about the issue and delegated the power to the legislatures. Despite the efforts of opposition the motion was rejected by 46 to 20 votes.



<b>Attribute</b>	<b>Total</b>	<b>No</b>	<b>Yes</b>	<b>Abstained from Voting</b>
Ethnic Majority	61	20	29	12
Linguistic Majority	61	20	29	12
Political Majority	56	5	42	9
Religious Majority	69	13	43	13
Strong Members/Party Leaders	26	6	15	5
Ulema	5	1	3	1
Older Age Group (50+)	43	10	26	7
Landowners	23	1	17	5
Ethnic Minority	19	0	17	2
Linguistic Minority	19	0	17	2
Political Minority	24	15	4	5
Religious Minority	11	7	3	1

Table 29: Vote I regarding Joint Electorates.

From the voting analysis we see that only three people from religious minority did not want to have Joint electorates and were comfortable leaving the choice to Parliament. Two of them were from majority party and one from schedule castes. From the group of Ulema only the member from opposition said “No” to this vote. In this vote again the political interests and religious interest played their role. The attributes of the members which were not directly conflicting with the issue of joint electorates eg profession, age etc did not play any factor in this voting decision.

## 7 Last Remarks

This chapter concluded the information on the attributes of the members and the available voting roll calls on different constitutional rules. Out of the six chosen constitutional rules, the roll call data was available only for two constitutional rules.

The hypotheses were analysed at two levels, 'broad' and 'narrow'. At the broad level we saw that the members were indeed utility-maximizing individuals participating in the constitution-making process for their own interest. They did not give any importance to the clauses which did not meet their interest. They showed more attendance and participation in interest specific clauses. Some of them participated in the process only to vote according to their political or religious interests and otherwise showed no participation.

We also found that British influence was less pre-dominant than that of the Indian and the old constitutions. In addition the chapter also provided an overview of the general behavior of the members during the constitution-making and also of their voting behaviors.

From this chapter we also see that our initial assumption, that in interest specific provisions members will vote according to their obvious interest (as seen in the votes casted by non-Muslim members and East Pakistan members) was proved quite reasonably correct. But here we also noted that several interests play simultaneous roles and every member votes according to his own utility function.

In this chapter we saw that political party and religious interest groups were the most strongest of all. All kinds of pressure mechanisms were applied by these two interest groups. The ethnic affiliations also seemed to play a role but not to that extent as the other two. We also saw that majorities preferred more the presidential system while minorities seem to relate more to parliamentary system (an effect somewhat mollified by interest groups but seemed to hold true to much extent). Also the majorities did not seem to favour with broader human rights just as expected.

The final constitutional draft was parliamentary but with an unusually strong president, federal with almost Unitary behavior and had human rights that were subject to will of majority and were considered unfair to non-Muslims

and to minority groups. Surprisingly the constitution lacked electoral rules and had one house of Parliament pairing with a federation in place.

## Chapter X: Conclusion

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Like most research projects, from the stage of literature review till the stage of results generation there were several unexpected setbacks. The most important one was that of gathering meaningful data for the empirical analysis. Despite this problem, by making use of the available data and resources we were able to generate meaningful results and these findings may be seen as a contribution in the newly developing field of Positive Constitutional Economics.

The research has yielded several important findings, the crux of which is that Self-Interest and Utility Maximizing behavior of individuals do not cease to manifest even making seemingly altruistic decisions. Even when the probability of finding the desired outcomes is almost negligible, the self-interest does not stop playing a major role in decision making. Time duration in which the decision/contract is implemented or stays in effect may lead to the expectation that decision maker may get a little irresponsible or complacent. But in case of Pakistani constitution we did not see such a thing. We saw that the interest groups who have a powerful position at the time of constitution making expect to hold that position in future too and neither give in nor stop acting according to their interests. They do what they think is in their interest and vote accordingly.

Our project focused on the Individualistic Economic Model and Voting behavior predictions. Despite the limited amount of data available, our hypotheses were confirmed to be pretty accurate. We find that the constitution-maker is also a rational individual who can rank his choices with perfect certainty. He can rank his alternatives and choose the alternate results of collective choice according to his own utility function.

In case of presidential system we saw that as expected the ethnic majorities, linguistic majorities, political and religious majorities and strong members favored more the presidential system. While the political and religious minorities as expected favored the parliamentary system. The hypotheses were not found so consistent in case of linguistic minorities, ethnic minorities, landowners and ulema. There may be other explanations for these.

In case of federalism we found out that as expected the older age group members, landowners and foreign educated members favored more the unitary system. In case of religious ulemas and rich states members the hypotheses were not found consistent.

In case of human rights, we found that that majority (ethnic, linguistic, political and religious) will try to curtail human rights for others. Similarly we assumed that minorities will opt for broader human rights which were corroborated by results in case of political and religious minorities but were not supported by empirical analysis in case of ethnic minority and linguistic minority.

We found other observations that also supplement our research model. We saw a lot of “peer pressure” playing a role in assembly. We noted at more than one occasions that members admitted personal preferences of an option, but they did not vote accordingly due to political party pressure or public pressure. This observation also supplements our model of utility maximization because to remain in good favors of the political party and the public is definitely a self-interested behavior. This peer pressure was also noted when many members were used only for voting and these did not participate in the meetings actively.

We also noted that non-self interested clauses were not discussed in assembly at all rather some like election rules were not included in the constitution altogether. Also self-Interested behavior was obvious by the Islamisation factor in the constitution. The religious fervor was used by the constitution-makers for their own agendas. Although many members were not consistent on what they wanted, they tried to use the Islamic passion of the society to their own advantage.

Procedural rules are always considered to have their own importance in the final shape of a constitution (Voigt, 2009). We came across the observation that procedural rules not only shape the constitution in a general way but can also be manipulated to influence the constitution in a self-interested way. We

saw that rules providing for referendum were called on again and again to be used as delaying techniques etc.

In Pakistani constitutional debates the discussions in assembly were open to press and public which led the members to speak and vote according to the desires of the public as noted in case of Islamisation of the constitution. On one hand this transparency may seem necessary but in our case we noted the fact that this rule was manipulated by the constitution-makers who used the assembly floor to their own political advantage. This costs not only the time and resources but also maneuvers the emotions of masses. We also saw that procedural rules relating to powers of speaker curtailed many meaningful discussions that did not match with majorities' point of view.

Regarding the misuse of procedural rules, another observation was made about the neutrality of the officers of assembly. It was put to question in the research and it was found that they did favour one interest group over the other. We find out that these officers had their own contribution in shaping the constitution as we noted on several occasions that debates against their own view point were curtailed or ridiculed.

The case study also shows that the constitutions are not just influenced by pre-constitutions but also by other contemporary constitutions especially of the neighboring states. We expected that Pakistani constitution be somewhat influenced by the British constitution. Although it was found to be true to some extent, however we found the Indian constitution to have more of an impact on the minds of constitution-makers. In future research projects it may be possible to analyse a country's new constitution on the basis of its neighbors or other relevant countries.

For concluding our discussions, we go back to the research questions that we noted down in the beginning.

1) What were the Economic Interests that influenced the constitutional choices seen in Pakistan's constitution?

Referring back to our Economic Model we can say that all Personal and Ideological interests of the members influenced the final shape of the constitution.

2) The constitutional choices that are seen, is there any inter-relation? Does one choice lead to another or simply a random approach is taken based upon the interests of the utility maximising individuals.

We saw that constitutional choices were decided in such a way that first the clauses relating to the general design of the constitution were selected and once the decisions were made on those, the discussion on interest-related clauses started. The general design clauses albeit their importance were not given any extra importance by the constitution-makers (again showing their self-interested behavior). The interest-related clauses however took great bargaining from the parties and also consumed a lot of time of assembly.

3) Which interest groups were involved and whose interests seem to be manifested in the constitutional draft?

Major interest groups identified in the society were landlords, lawyers, Punabis, Bengalis, and Ulemas. The constitution seems to be a bargain between all these members fighting for their own interests.

Once it becomes obvious that the self-interest plays a major role, one may think about minimizing or putting checks on the system. The research can also be extended to the important policy choices. It can easily be deduced that if self-interest does not stop playing a role at the constitutional level, it sure is likely to affect policy level decisions.

Thus keeping this theory in mind retrospective checks and balances can be applied not only on constitutional decisions but also on policy level choices.



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## **Appendices**

### **Appendix I**

#### **Dates of Sessions:**

1. 9th January 1956 (Point of Privilege)
2. 16th January 1956
3. 17th January 1956 (Point of Privilege)
4. 21st January 1956
5. 23<sup>rd</sup> January 1956 (Point of Privilege)
6. 24<sup>th</sup> January 1956 (Point of Privilege)
7. 25th January 1956 (Point of Privilege)
8. 26th January 1956 (Point of Privilege)
9. 27th January 1956
10. 28th January 1956
11. 31st January 1956
12. 1<sup>st</sup> February 1956 (Point of Privilege)
13. 2nd February 1956
14. 3rd February 1956
15. 4th February 1956 (Point of Privilege)
16. 6<sup>th</sup> February 1956 (Point of Privilege)
17. 7<sup>th</sup> February 1956
18. 8<sup>th</sup> February 1956
19. 9<sup>th</sup> February 1956 (Point of Privilege)
20. 10<sup>th</sup> February 1956
21. 13<sup>th</sup> February 1956
22. 14<sup>th</sup> February 1956
23. 15<sup>th</sup> February 1956 (Point of Privilege)
24. 16<sup>th</sup> February 1956
25. 17<sup>th</sup> February 1956
26. 20<sup>th</sup> February 1956
27. 21<sup>st</sup> February 1956
28. 23<sup>rd</sup> February 1956 (Point of Privilege)
29. 28th February 1956
30. 29th February 1956

## Appendix II

Members	Gender	Wing	Geographical Origin	Religion	Political Party	Age in 1956	Education	Educational Institute	Profession	Institutional Linkage (in 1956)	Political Presence	Other Info
1/Abdul Aleem	M	East	Dacca	Muslim	United Front	50	Law Degree	Local/Calcutta University	Lawyer	Legislator		
2/Abdul Karim	M	East	Tipperra	Muslim	United Front	55	Law Degree	Local/Calcutta University	Lawyer			
3/Muhammad Abdul Khaleque	M	East	Jessore	Muslim	Awami League	45	Law Degree	Local/Calcutta University	Lawyer		Speaker Constituent Assembly	Ulema/Madrassa
4/Al Haj Abdul Wahab Khan	M	East	Barisal	Muslim	United Front/Nizam-e-Isl	58	Law Degree	Local/Calcutta University	Lawyer	Legislator		
5/Abdur Rahman Khan	M	East	Brahmanbaria	Muslim	Awami League	50	Law Degree	Local/Dacca University	Lawyer	Legislator		
6/Abdus Sattar	M	East	Birbhun	Muslim	Krishak Samik Party/UF	51	MA Pol Sci Law Degree	Local/Calcutta University	Lawyer/Journalist	Executive / Minister		
7/Abul Mansur Ahmad	M	East	Mymensingh	Muslim	Awami League	58	Law Degree	Local/Calcutta University	Lawyer	Legislator		
8/Adeluddin Ahmad	M	East	Faridpur	Muslim	United Front	43	Law Degree	Local/Calcutta University	Lawyer	Executive / Minister		
9/Chaudary Mohammad Ali	M	East	Jallunder	Muslim	Muslim League	51	Msc	Local/Punjab University	Ex Civil Servant	Executive / Minister	Prime Minister	Ex-Civil Servant
10/Ataur Rahman Khan	M	East	Dacca	Muslim	Awami League	53	Law Degree	Local/Dacca University	Lawyer	Executive / Minister	Vice President of Awami League	
11/Moulana Hafiz Athar Ali	M	East	Sylhet	Muslim	United Front	60	Islamic Degrees	Local/Dacca University	Ulema/Teacher		President Nizam-Islam Party and wanted	Ulema/Madrassa
12/Gour Chandra Bala	M	East	Faridpur	Non-Muslim	Scheduled Caste Feder	29		Local/Islamic Madrassah	Teacher			
13/Canteswar Barmen	M	East	Rangpur	Non-Muslim	Congress/UF	60						
14/Abdul Latif Biswas	M	East	Dacca	Muslim	Krishak Samik Party/Un	59	Law Degree	Local/Calcutta University	Lawyer	Executive / Minister	Minister of Food and Agriculture	
15/Muhammad Nurul Huq ChaudM	M	East	Chittagong	Muslim	United Front	45	Law Degree	Local/Calcutta University	Lawyer	Executive / Minister	Minister of Labour Work and minorities	Lived in Burma for
16/Hamidul Huq Choudhury	M	East	Naokhali	Muslim	United Front	53	Law Degree	Local/Calcutta University	Landlord	Executive / Minister	Minister of Foreign Affairs	comes from old
17/Yusuf Ali Chudhury	M	East	Faridpur	Muslim	United Front	51	Not much educated	No Formal Education			President East Bengal Scheduled Castes Federation	
18/Akshay Kumar Das	M	East	Sylhet	Non-Muslim	Scheduled Caste Feder	53	Law Degree				Leader of Pakistan National Congress Party	
19/Basanta Kumar Das	M	East	Sylhet	Non-Muslim	Congress/ UF	73						
20/A.H Deldar Ahmed	M	East	Khulna	Muslim	Awami League	45	Law Degree	Local/Calcutta University	Lawyer	Legislator		Jailed for 23 years
21/Bhupendra Kumar Dutta	M	East	Jessore	Non-Muslim	Congress/ UF	62	Bachelors	Local/Calcutta University	Lawyer	Executive / Minister	Health Minister	Ulema/Madrassa
22/Karim Kumar Dutta	M	East	Tipperra	Non-Muslim	United Progressive Part	78	Law Degree	Local/Dacca College	Teacher/Lawyer			
23/Farid Ahmad	M	East	Chittagong	Muslim	United Front/Nizam-e-Isl	33	Law Degree	Local/Dacca College	Lecturer Dacca University	Legislator		
24/Sardar Fazlul Karim	M	East	Barisal	Muslim	Independent Member	32	MA Philosophy	Local/Dacca University	Lawyer			
25/Fazlur Rahman	M	East	Dacca	Muslim	Independent Member	51	MA Law Degree	Local/Dacca University	Insurance agent			
26/Peter Paul Gomez	M	East	Dacca	Non-Muslim	Congress/ UF	38	Bachelors	Local/Dacca University	Businessman	Executive / Minister	Minister of State Finance	Ex Govt Servant
27/Lutfur Rahman Khan	M	East	Mymensingh	Muslim	Krishak Samik Party/Un	45	BA	Local/Islamia College Cal	Ex Govt Servant			Ex Govt Servant
28/Mahzuzul Huq	M	East	Chittagong	Muslim	United Front	55				Legislator	Secretary General Ganatari Dal Party	Public Prosecutor
29/Mannud Ali	M	East	Sylhet	Muslim	Ganatantra Dal	37	Bachelors	Local/IMC College Sylhet			Gen Secretary East Bengal Scheduled Castes Federation	Ex Govt
30/Rasa Raj Mandal	M	East	Dacca	Non-Muslim	scheduled cast Federati	41						
31/Syed Mubsharuddin Hussain	M	East	Mymensingh	Muslim	United Front	65	Law Degree	Local/Calcutta University	Lawyer	Legislator		
32/Muslim Ali Molla	M	East	Rajshahi District	Muslim	Awami League	63	Not much educated	No Formal Education	Businessman			
33/Shekh Mujibur Rahman	M	East	Faridpur	Muslim	Awami League	33	Bachelors	Local/Calcutta University	Small landowner	Legislator	Secretary Awami League Parliamentary Party	Ex Govt Servant
34/Muzaffar Ahmad	M	East	Chittagong	Muslim	Awami League	48			Merchant	Legislator		Merchant
35/Nurur Rahman	M	East	Sylhet	Muslim	Awami League	35			Lawyer/Professor/Jo	Executive / Minister	Leader of United Front/Minister of Interior	
36/A.K.Fazlul Huq	M	East	Barisal	Muslim	United Front	59	Doctor of medicine	Local/Calcutta University	Doctor	Legislator		
37/Dr. S.K.Sen	M	East	Dacca	Non-Muslim	United Progressive Part	63	MA Law Degree	Foreign/Oxford	Lawyer	Executive / Minister	Opposition Leader in Assembly	
38/H.S Suhrawardy	M	East	Midnapur	Muslim	Awami League	55	Islamic Degrees	Local/Islamic Madrassah	Ulema	Legislator		Ulema/Madrassa
39/Moulana Abdur Rashid TarkalM	M	East	Pabna	Muslim	Awami League							
40/Zahiruddin	M	East	Hoggy	Muslim	Awami League							



Members	Gender	Wing	Geographical Origin	Religion	Political Party	Age in 1956	Education	Educational Institute	Profession	Institutional Linkage (in 1956)	Political Presence	Other Info
41 Mian Abdul Bari	M	West	Punjab	Muslim	Muslim League/Associat	61	Bachelors/MA Student	Local/GC Lahore				
42 Abdul Hamid Khan Soofi	M	West	Punjab/Karnal	Muslim	Muslim League	36		Local Bahawalpur College				Ulema
43 Syed Abid Hussain Shah	M	West	Punjab	Muslim	Muslim League	41	Not much educated	Local/Atchison Lahore	Landlord	Executive / Minister	Minister of Food and Agriculture	
44 Syed Anjad Ali	M	West	Punjab Lahore	Muslim	noongroup/republican	49	Bachelors	Foreign/Middle Temple Lon	Businessman	Executive / Minister	Minister of Finance	Ex Civil Servant
45 Sardar Amir Azam Khan	M	West	Punjab	Muslim	Muslim League	42	Law Degree	Local/Agra University	Lawyer/Politician	Executive / Minister	Minister of State Refugees	
46 Malik Amir Mohammad Khan	M	West	Punjab	Muslim	Muslim League	46		Foreign/Oxford	Landlord			
47 Chaudhri Azz Din	M	West	Punjab	Muslim	Muslim League		Law Degree		Lawyer			
48 Chaudhri Muhammad Hussain	M	West	Punjab	Muslim	Muslim League	42	Law Degree	Local/Law College Lahore	Lawyer			
49 I. Chundrigar	M	West	Punjab	Muslim	Muslim League	59	Law Degree	Local/Bombay University	Lawyer	Executive / Minister	Law Minister	
50 Sardar Abdul Hameed Khan I M	M	West	Punjab	Muslim	Muslim League	61	Law Degree	Local/Law College Lahore	Lawyer/Landlord	Executive / Minister	Education Minister West Pakistan	Ex Public Prosecutor
51 Mian Mumtaz Muhammad Kh M	M	West	Punjab	Muslim	Muslim League	40	Law Degree	Foreign/Oxford	Lawyer/Landlord			
52 Chaudhry Abdul Ghani Ghum M	M	West	Punjab	Muslim	Muslim League							
53 C.E Gibbon	M	West	Punjab	Non-Muslim	Muslim League/Associate					Deputy Speaker Constituent Assembly		
54 Mushtaq Ahmad Gurnani	M	West	Punjab	Muslim	Muslim League	51		Local/Aligarh University	Landlord			
55 Syed Alamdar Hussain Shah M	M	West	Punjab	Muslim	Muslim League	36	Bachelors	Local/Emerson College Multan				comes from old
56 Mian Muhammad Iftikharuddin M	M	West	Punjab/Lahore	Muslim	Independent Member	48	Bachelors	Foreign/Oxford	Landlord/Journalist			comes from old
57 Mozaffar Ali Khan Qizilbash	M	West	Punjab Lahore	Muslim	noongroup/republican	48	Law Degree	Foreign/Cambridge	Lawyer/Landlord			comes from old
58 Khan Iftikhar Hussain Khan of M	M	West	Punjab	Muslim	Muslim League	50	Bachelors	Local/GC Lahore	Landlord/Ex Civil Servant			
59 Mir Balakh Sher Mazari	M	West	Punjab	Muslim	Independent Member	28	Not much educated	Local/ Atchison Lahore	Landlord			comes from old
60 Syed Mohyuddin Lai Badshah M	M	West	Punjab/Attock	Muslim	Muslim League	47			Businessman	Legislator		
61 Malik Mohammad Firoz Khan M	M	West	Punjab	Muslim	noongroup/republican	63	Law Degree	Foreign/Oxford	Lawyer/Author	Executive / Minister	Minister of Information	
62 Pir Ali Mohammad Rashti	M	West	Sind/Larkana	Muslim	Muslim League	51	No Formal Education	No Formal Education	Journalist			comes from old
63 Hajj Moula Baksh Soomro	M	West	Sind	Muslim	Muslim League	51		Local/Quetta	Landlord	Executive / Minister	Finance Minister of West Pakistan	comes from old
64 M.A. Khuro	M	West	Sind/Larkana	Muslim	Muslim League	55	Not much educated	Local/DJ College Karachi	Landlord			comes from old
65 Siroomal Kripaldas	M	West	Sind	Non-Muslim	Muslim League/Associat	51			Landlord			comes from old
66 Mir Ghulam Ali Khan Talpur	M	West	Sind	Muslim	Muslim League	47	Bachelors	Local/Bombay University	Landlord			comes from old
67 Sardar Abdur Rashid Khan	M	West	NWFP	Muslim	Muslim League	50	MA/Law Degree	Local/Isamia College Pesh	Ex Civil Servant			comes from old
68 Mian Jaffer Shah	M	West	NWFP	Muslim	Muslim League	53	Not much educated	Local/Isamia College Pesh	Landlord			Ex Civil Servant
69 Khan Mohammad Jalaaludin IM	M	West	NWFP	Muslim	Muslim League	53	Not much educated	Local/Isamia College Pesh	Businessman			comes from old
70 M.R. Kayan	M	West	NWFP	Muslim	Muslim League	36	law student when entered	Local/Aligarh University			Minister of Works and Health	
71 Khan Bahadur Hajj Malik Meh M	M	West	NWFP/Tribal Area	Muslim	Muslim League				Landlord			comes from old
72 Malik Jehangir Khan	M	West	NWFP/Tribal Area	Muslim	Muslim League	35			Landlord			comes from old
73 Malik Waris Khan Maliklinkhe M	M	West	NWFP/Tribal Area	Muslim	Muslim League	40			Landlord			comes from old
74 Maj General M.A.H. Jahan Za M	M	West	Frontier States/Sy	Muslim	Muslim League	48	Bachelors	Local/Isamia College Pesh	Landlord			Ex Civil Servant
75 Mian Abdus Salam	M	West	Bahawalpur	Muslim	Awami League			Local/Punjab University	Ex Civil Servant			comes from old
76 Syed Ahmed Nawaz Shah Ga M	M	West	Bahawalpur	Muslim	Muslim League	30		Local/Aligarh University	Landlord			comes from old
77 Yusuf A Haroon	M	West	Karachi	Muslim	Muslim League	39		Local/Karachi	Businessman			comes from old
78 Dr Khan Sahib	M	West	Balochistan	Muslim	Muslim League/Associat	74	Doctor of medicine	Foreign/St Thomas med scl	Doctor/Landlord	Executive / Minister	Chief Minister of West Pakistan/Communications	
79 Nawab Mir Bai Khan	M	West	Balochistan Mekkri	Muslim	Muslim League	66			Landlord			
80 Mirza Mumtaz Hasan Kizilbas M	M	West	Khairpur state	Muslim	Muslim League	59	Bachelors	Local/Alahabad university	Ex Civil Servant			Ex Civil Servant

## Appendix III: Voting Roll Calls

### List I: Constitutional Draft shall be referred for Reconsideration or Referendum

Page 2304, date 1st Feb , 1956

NOES

AYES

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Akshay Kumar Das</li> <li>7. Moulana Hafiz Athar Ali</li> <li>8. Farid Ahmad</li> <li>9. A. K. Fazlul Haq</li> <li>10. Hamidul Huq Choudhury</li> <li>11. Kamini Kumar Dutta</li> <li>12. Lutfar Rahman Khan</li> <li>13. Nurul Huq Choudhury</li> <li>14. Rasa Raj Mandal</li> <li>15. Dr. S. K. Sen</li> <li>16. Yousaf Ali Choudhry</li> <li>17. Soofi Abdul Hamid Khan</li> <li>18. Syed Abid Hussain Shah</li> <li>19. Syed Alamdar Hussain Shah Gilani</li> <li>20. Sardar Amir Azam Khan</li> <li>21. Malik Amir Mahmood Khan</li> <li>22. Chaudhri Aziz Din</li> <li>23. I. I. Chundrigar</li> <li>24. Mohamad Ali</li> <li>25. Chaudhry Muhammad Hussain Chatha</li> <li>26. Mian Mumtaz Muhammad Khan Daultana</li> <li>27. Syed Mohyuddin Lal Badshah</li> <li>28. Mushtaq Ahmad Gurmani</li> <li>29. Sardar Abdur Rashid Khan</li> <li>30. Mian Jaffar Shah</li> <li>31. Khan Mohammad Jalaluddin Khan</li> <li>32. M. R. Kayani</li> <li>33. Pir Ali Mohammad Rashdi</li> <li>34. Ghulam Ali Khan Talpur</li> <li>35. M. A. Khuhro</li> <li>36. Siroomal Kirpaldas</li> <li>37. Dr. Khan Sahib</li> <li>38. Yusuf A. Haroon</li> <li>39. Mian Abdus Salam</li> <li>40. Mirza Mumtaz Hassan Kizalbash</li> <li>41. Major General M. A. H. Jahan Zeb</li> <li>42. Malik Jehangir Khan Madda Khel Wazir</li> <li>43. K. B. Haji Malik Mehrdil Khan Muhsud</li> <li>44. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Ataur Rehman Khan</li> <li>6. A. H. Deldar Ahmad</li> <li>7. Fazlur Rahman</li> <li>8. Mahmud Ali</li> <li>9. Moslem Ali Molla</li> <li>10. Sheikh Mujibur Rahman</li> <li>11. Muzaffar Ahmad</li> <li>12. Nurur Rehman</li> <li>13. Zahiruddin</li> </ol>
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**List II: Word “Reasonable” be inserted for Restrictions in Human Rights (10)**

Page 2427 Date 4th Feb. 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Latif Biswas</li> <li>3. Abdus Sattar</li> <li>4. Adeluddin Ahmed</li> <li>5. Akshay Kumar Das</li> <li>6. Farid Ahmad</li> <li>7. A. K. Fazlul Haq</li> <li>8. Gour Chandra Bala</li> <li>9. Hamidul Huq Choudhury</li> <li>10. Kamini Kumar Dutta</li> <li>11. Lutfar Rahman Khan</li> <li>12. Nurul Huq Choudhury</li> <li>13. Rasa Raj Mandal</li> <li>14. Sardar Abdul Hameed Khan Dasti</li> <li>15. Soofi Abdul Hamid Khan</li> <li>16. Syed Abid Hussain Shah</li> <li>17. Sardar Amir Azam Khan</li> <li>18. Chaudhri Aziz Din</li> <li>19. Mir Balakh Sher Mazari</li> <li>20. I. I. Chundrigar</li> <li>21. Mohamad Ali</li> <li>22. Chaudhry Muhammad Hussain Chatha</li> <li>23. Syed Mohyuddin Lal Badshah</li> <li>24. Khan Mohammad Jalaluddin Khan</li> <li>25. M. R. Kayani</li> <li>26. Pir Ali Mohammad Rashdi</li> <li>27. Ghulam Ali Khan Talpur</li> <li>28. M. A. Khuhro</li> <li>29. Siroomal Kirpaldas</li> <li>30. Dr. Khan Sahib</li> <li>31. Yusuf A. Haroon</li> <li>32. Mirza Mumtaz Hassan Kizalbash</li> <li>33. Major General M. A. H. Jahan Zeb</li> <li>34. Malik Jehangir Khan Madda Khel Wazir</li> <li>35. K. B. Malik Mehrdil Khan Mahsud</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Basanta Kumar Das</li> <li>6. Bhupendra Kumar Dutta</li> <li>7. Canteswar Barman</li> <li>8. Fazlur Rehman</li> <li>9. Mahmud Ali</li> <li>10. Moslem Ali Molla</li> <li>11. Sheikh Mujibur Rahman</li> <li>12. Muzaffar Ahmad</li> <li>13. Nurur Rehman</li> <li>14. Peter Paul Gomez</li> <li>15. H. S. Suhrawardy</li> <li>16. Zahiruddin</li> </ol>
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**List III: Clause 17 which was related to the appointments in federal and government services. In this the opposition desired to have the clause inserted that in all services the number of appointees will be the same from both East and West Pakistan.**

Volume 1, Page 2476 . 6th Feb 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Akshay Kumar Das</li> <li>7. Moulana Hafiz Athar Ali</li> <li>8. Farid Ahmad</li> <li>9. A.K. Fazlul Huq</li> <li>10. Gour Chandra Bala</li> <li>11. Hamidul Huq Choudhury</li> <li>12. Kamini Kumar Dutta</li> <li>13. Lutfar Rahman Khan</li> <li>14. Syed Mahfuzal Huq</li> <li>15. Nurul Huq Choudhury</li> <li>16. Rasa Raj Mandal</li> <li>17. Soofi Abdul Hamid Khan</li> <li>18. Syed Abid Hussain Shah</li> <li>19. Sardar Amir Azam Khan</li> <li>20. Mir Balakh Sher Mazari</li> <li>21. I. I. Chundrigar</li> <li>22. Mohamad Ali</li> <li>23. Chaudhry Muhammad Hussain Chatha</li> <li>24. Syed Mohyuddin Lal Badshah</li> <li>25. Sardar Abdur Rashid Khan</li> <li>26. Khan Mohammad Jalaluddin Khan</li> <li>27. M. R. Kayani</li> <li>28. M. A. Khuhro</li> <li>29. Siroomal Kirpaldas</li> <li>30. Yusuf A. Haroon</li> <li>31. Major General M. A. H. Jahan Zeb</li> <li>32. Malik Jehangir Khan Madda Khel Wazir</li> <li>33. K. B. Haji Malik Mehrdil Khan Mashud</li> <li>34. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. A. H. Deldar Ahmad</li> <li>6. Fazlur Rahman</li> <li>7. Mahmud Ali</li> <li>8. Moslem Ali Molla</li> <li>9. Sheikh Mujibur Rahman</li> <li>10. Muzaffar Ahmad</li> <li>11. Nurur Rehman</li> <li>12. Zahiruddin</li> </ol>
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**List IV: Clause 31 which again related to services in Pakistan. Opposition wanted that for all government services parity should be maintained between employees from East and West Pakistan and the government should make sure that this is done expeditely.**

Page 2599 , 7th feb, 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Akshay Kumar Das</li> <li>7. Moulana Hafiz Athar Ali</li> <li>8. Farid Ahmad</li> <li>9. Gour Chandra Bala</li> <li>10. Hamidul Huq Choudhury</li> <li>11. Kamini Kumar Dutta</li> <li>12. Lutfar Rahman Khan</li> <li>13. Syed Mahfuzal Huq</li> <li>14. Nurul Huq Choudhury</li> <li>15. Soofi Abdul Hamid Khan</li> <li>16. Syed Abid Hussain Shah</li> <li>17. Sardar Amir Azam Khan</li> <li>18. Mir Balakh Sher Mazari</li> <li>19. I. I. Chundrigar</li> <li>20. Iftikhar Husain Khan of Mamdot</li> <li>21. Chaudhry Muhammad Hussain Chatha</li> <li>22. Mian Mumtaz Muhammad Khan Daultana</li> <li>23. Syed Mohyuddin Lal Badshah</li> <li>24. Mushtaq Ahmad Gurmani</li> <li>25. M. R. Kayani</li> <li>26. Ghulam Ali Khan Talpur</li> <li>27. Haji Maula Bakhsh Soomro</li> <li>28. Siroomal Kirpaldas</li> <li>29. Dr. Khan Sahib</li> <li>30. Yusuf A. Haroon</li> <li>31. Mirza Mumtaz Hassan Kizilbash</li> <li>32. Major General M. A. H. Jahan Zeb</li> <li>33. Malik Jehangir Khan Madda Khel Wazir</li> <li>34. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Bhupendra Kumar Dutta</li> <li>6. Canteswar Barman</li> <li>7. A. H. Deldar Ahmad</li> <li>8. Fazlur Rahman</li> <li>9. Mahmud Ali</li> <li>10. Moslem Ali Molla</li> <li>11. Sheikh Mujibur Rahman</li> <li>12. Muzaffar Ahmad</li> <li>13. Nurur Rehman</li> <li>14. Peter Paul Gomez</li> <li>15. Zahiruddin</li> </ol>
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**List V: Sub-clause (3) of clause 122. The opposition demanded that the executive authority of federation should be curtailed in provinces and a clause is inserted to that effect.**

Page 2719 , 8th Feb 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Akshay Kumar Das</li> <li>7. Moulana Hafiz Athar Ali</li> <li>8. Farid Ahmad</li> <li>9. Hamidul Huq Choudhury</li> <li>10. Lutfar Rahman Khan</li> <li>11. Nurul Huq Choudhury</li> <li>12. Sardar Abdul Hameed Khan Dasti</li> <li>13. Soofi Abdul Hamid Khan</li> <li>14. Syed Abid Hussain Shah</li> <li>15. Syed Alamdar Hussain Shah Gilani</li> <li>16. Sardar Amir Azam Khan</li> <li>17. Choudhri Aziz Din</li> <li>18. I. I. Chundrigar</li> <li>19. Iftikhar Husain Khan of Mamdot</li> <li>20. Mohammad Ali</li> <li>21. Chaudhry Muhammad Hussain Chatha</li> <li>22. Mian Mumtaz Muhammad Khan Daultana</li> <li>23. Sardar Abdur Rashid Khan</li> <li>24. Mian Jaffar Shah</li> <li>25. Khan Mohammad Jalaluddin Khan</li> <li>26. M. R. Kayani</li> <li>27. M. A. Khuhro</li> <li>28. Siroomal Kirpaldas</li> <li>29. Dr. Khan Sahib</li> <li>30. Yusuf A. Haroon</li> <li>31. Mian Abdus Salam</li> <li>32. Mirza Mumtaz Hassan Kizilbash</li> <li>33. Major General M. A. H. Jahan Zeb</li> </ol>	<ol style="list-style-type: none"> <li>1. Abdur Rehman Khan</li> <li>2. Moulana Abdur Rashid Tarkabagish</li> <li>3. Abdul Mansur Ahmad</li> <li>4. A. H. Deldar Ahmad</li> <li>5. Mahmud Ali</li> <li>6. Moslem Ali Molla</li> <li>7. Sheikh Mujibur Rahman</li> <li>8. Muzaffar Ahmad</li> <li>9. Zahiruddin</li> </ol>
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**List VI: Clause 201-sub-clause (1). The number of the clause is again different in the final draft nevertheless it is important to know the subject of the clause. This clause was relevant to the emergency provisions. In case of any disturbance the President and the central government was allowed to declare emergency and to intervene in provincial affairs. Opposition wanted to maintain a limit on this intervention by demanding to insert the words that this can only be done in case of war, external aggression and armed rebellion. This would at least limit the central government that emergency provisions will not be invoked unnecessarily.**

Page 2804

date 9th Feb , 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Farid Ahmad</li> <li>6. A. K. Fazlul Huq</li> <li>7. Hamidul Huq Choudhury</li> <li>8. Kamini Kumar Dutta</li> <li>9. Lutfar Rahman Khan</li> <li>10. Mohammad Nurul Huq Choudhury</li> <li>11. Chaudhry Abdul Ghani Ghuman</li> <li>12. Sardar Abdul Hameed Khan Dasti</li> <li>13. Soofi Abdul Hamid Khan</li> <li>14. Syed Abid Hussain Shah</li> <li>15. Sardar Amir Azam Khan</li> <li>16. Malik Amir Mohammad Khan</li> <li>17. Choudhri Aziz Din</li> <li>18. I. I. Chundrigar</li> <li>19. Iftikhar Husain Khan of Mamdot</li> <li>20. Mohamad Ali</li> <li>21. Syed Mohyuddin Lal Badshah</li> <li>22. Mian Jaffer Shah</li> <li>23. Khan Mohammad Jalaluddin Khan</li> <li>24. M. R. Kayani</li> <li>25. Ghulam Ali Khan Talpur</li> <li>26. M. A. Khuro</li> <li>27. Siroomal Kirpaldas</li> <li>28. Dr. Khan Sahib</li> <li>29. Yusuf A. Haroon</li> <li>30. Mirza Mumtaz Hassan Kizilbash</li> <li>31. Nawab Mir Bai Khan</li> <li>32. Major General M. A. H. Jahan Zeb</li> <li>33. Malik Jehangir Khan Madda Khel Wazir</li> <li>34. K. B. Haji Malik Mehrdil Khan Mahsud</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Bhupendra Kumar Dutta</li> <li>6. Canteswar Barman</li> <li>7. A. H. Deldar Ahmad</li> <li>8. Mahmud Ali</li> <li>9. Moslem Ali Molla</li> <li>10. Sheikh Mujibur Rahman</li> <li>11. Muzaffar Ahmad</li> <li>12. Nurur Rehman</li> <li>13. Peter Paul Gomez</li> <li>14. Zahiruddin</li> </ol>
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**List VII: Clause 233. It was about the privileges of the members of national assembly. Opposition wanted that judicial immunity is granted to some extent and members are not arrested for petty crimes without approval of assembly. As mentioned previously there were many notorious laws existing at the time that governments could use to their advantage.**

Page 2873 10th feb, 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Adeluddin Ahmed</li> <li>5. Akshay Kumar Das</li> <li>6. Farid Ahmad</li> <li>7. Gour Chandra Bala</li> <li>8. Hamidul Huq Choudhury</li> <li>9. Kamini Kumar Dutta</li> <li>10. Lutfar Rahman Khan</li> <li>11. Syed Mahfuzal Huq</li> <li>12. Nurul Huq Choudhury</li> <li>13. Rasa Raj Mandal</li> <li>14. Chaudhry Abdul Ghani Ghuman</li> <li>15. Sardar Abdul Hameed Khan Dasti</li> <li>16. Soofi Abdul Hamid Khan</li> <li>17. Syed Abid Hussain Shah</li> <li>18. Syed Alamdar Hussain Shah Gilani</li> <li>19. Sardar Amir Azam Khan</li> <li>20. Malik Amir Mahmood Khan</li> <li>21. Chaudhri Aziz Din</li> <li>22. I. I. Chundrigar</li> <li>23. Khan Iftikhar Husain Khan of Mamdot</li> <li>24. Mohamad Ali</li> <li>25. Chaudhry Muhammad Hussain Chatha</li> <li>26. Mian Mumtaz Muhammad Khan Daultana</li> <li>27. Syed Mohyuddin Lal Badshah</li> <li>28. Mian Jaffar Shah</li> <li>29. Khan Mohammad Jalaluddin Khan</li> <li>30. M. R. Kayani</li> <li>31. Pir Ali Mohammad Rashdi</li> <li>32. Ghulam Ali Khan Talpur</li> <li>33. M. A. Khuhro</li> <li>34. Haji Moula Bakhsh Soomro</li> <li>35. Siroomal Kirpaldas</li> <li>36. Yusuf A. Haroon</li> <li>37. Nawab Mir Bai Khan</li> <li>38. Malik Jehangir Khan Madda Khel Wazir</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Bhupendra Kumar Dutta</li> <li>6. Canteswar Barman</li> <li>7. A. H. Deldar Ahmad</li> <li>8. Mahmud Ali</li> <li>9. Moslem Ali Molla</li> <li>10. Sheikh Mujibur Rahman</li> <li>11. Muzaffar Ahmad</li> <li>12. Nurur Rehman</li> <li>13. Peter Paul Gomez</li> <li>14. Zahiruddin</li> <li>15. Mian Abdus Salam</li> </ol>
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**List VIII: Clause 7 which dealt with human rights. Opposition wanted that surety is given in the constitution that no man is detained without trial except in case of an enemy alien.**

Page 2941

Date

13th Feb, 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Akshay Kumar Das</li> <li>6. A. K. Fazlul Haq</li> <li>7. Hamidul Huq Choudhury</li> <li>8. Kamini Kumar Dutta</li> <li>9. Lutfar Rahman Khan</li> <li>10. Nurul Huq Choudhury</li> <li>11. Sardar Abdul Hameed Khan Dasti</li> <li>12. Soofi Abdul Hamid Khan</li> <li>13. Syed Alamdar Hussain Shah Gilani</li> <li>14. Sardar Amir Azam Khan</li> <li>15. Malik Amir Mahmood Khan</li> <li>16. Chaudhri Aziz Din</li> <li>17. I. I. Chundrigar</li> <li>18. Mohamad Ali</li> <li>19. Chaudhry Muhammad Hussain Chatha</li> <li>20. Syed Mohyuddin Lal Badshah</li> <li>21. Mian Jaffar Shah</li> <li>22. Khan Mohammad Jalaluddin Khan</li> <li>23. M. R. Kayani</li> <li>24. Pir Ali Mohammad Rashdi</li> <li>25. Ghulam Ali Khan Talpur</li> <li>26. M. A. Khuhro</li> <li>27. Haji Moula Bakhsh Soomro</li> <li>28. Siroomal Kirpaldas</li> <li>29. Dr. Khan Sahib</li> <li>30. Yusuf A. Haroon</li> <li>31. Mirza Mumtaz Hasan Kizilbash</li> <li>32. M. A. H. Jahan Zeb</li> <li>33. Malik Jehangir Khan Madda Khel Wazir</li> <li>34. K. B. Haji Malik Mehrdil Khan Muhsud</li> <li>35. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Abdul Mansur Ahmad</li> <li>4. Basanta Kumar Das</li> <li>5. Bhupendra Kumar Dutta</li> <li>6. Canteswar Barman</li> <li>7. A. H. Deldar Ahmad</li> <li>8. Mahmud Ali</li> <li>9. Moslem Ali Molla</li> <li>10. Sheikh Mujibur Rahman</li> <li>11. Muzaffar Ahmad</li> <li>12. Nurur Rehman</li> <li>13. Peter Paul Gomez</li> <li>14. H. S. Suhrawerdly</li> <li>15. Zahiruddin</li> </ol>
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**List IX: Clause 15 related to the property rights/fundamental rights. In some areas of Pakistan the landlord system was prevalent at that time and many of those landlords were in assembly. These amendments talked about landlordism system and the acquisition of personal property with or without compensation. Since protection of personal property and right of property was granted by the constitution. The opposition wanted that in case of landlord system the constitution should allow the national and provincial assemblies to acquire such property even without compensation.**

Page 3073

Date 14 Feb, 1956

Noes

Ayes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Latif Biswas</li> <li>3. Akshay Kumar Das</li> <li>4. Farid Ahmad</li> <li>5. Fazlur Rahman</li> <li>6. Kamini Kumar Dutta</li> <li>7. Lutfar Rahman Khan</li> <li>8. Rasa Raj Mandal</li> <li>9. Chaudhry Abdul Ghani Ghuman</li> <li>10. Sardar Abdul Hameed Khan Dasti</li> <li>11. Soofi Abdul Hamid Khan</li> <li>12. Syed Abid Hussain Shah</li> <li>13. Syed Alamdar Hussain Shah Gilani</li> <li>14. Sardar Amir Azam Khan</li> <li>15. Malik Amir Mahmood Khan</li> <li>16. Chaudhri Aziz Din</li> <li>17. Malik Muhammad Firoz Khan Noon</li> <li>18. Khan Iftikhar Husain Khan of Mamdot</li> <li>19. Mohammad Ali</li> <li>20. Mian Mumtaz Muhammad Khan Daultana</li> <li>21. Syed Mohyuddin Lal Badshah</li> <li>22. Mushtaq Ahmad Gurmani</li> <li>23. Mian Jaffar Shah</li> <li>24. Khan Mohammad Jalaluddin Khan</li> <li>25. M. R. Kayani</li> <li>26. Pir Ali Mohammad Rashdi</li> <li>27. Ghulam Ali Khan Talpur</li> <li>28. M. A. Khuhro</li> <li>29. Haji Moula Bakhsh Soomro</li> <li>30. Siroomal Kirpaldas</li> <li>31. Dr. Khan Sahib</li> <li>32. Mian Abdus Salam</li> <li>33. Syed Ahmad Nawaz Shah Gardezi</li> <li>34. Mirza Mumtaz Hassan Kizalbash</li> <li>35. Nawab Mir Bai Khan</li> <li>36. Major General M. A. H. Jahan Zeb</li> <li>37. Malik Jehangir Khan Madda Khel Wazir</li> <li>38. K. B. Haji Malik Mehrdil Khan Mahsudm</li> <li>39. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Abdul Mansur Ahmad</li> <li>4. Basanta Kumar Das</li> <li>5. Bhupendra Kumar Dutta</li> <li>6. Canteswar Barman</li> <li>7. A. H. Deldar Ahmad</li> <li>8. Mahmud Ali</li> <li>9. Moslem Ali Molla</li> <li>10. Sheikh Mujibur Rahman</li> <li>11. Muzaffar Ahmad</li> <li>12. Nurur Rehman</li> <li>13. Peter Paul Gomez</li> <li>14. S. K. Sen</li> <li>15. Zahiruddin</li> </ol>
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**List X: The federal list of subjects (5<sup>th</sup> Schedule).**

List Page no 3200, 16 feb, 1956

**AYES**

**NOES**

<ol style="list-style-type: none"><li>1. Mr. Abdul Aleem</li><li>2. Mr. Abdul Karim</li><li>3. The Honourable Mr. Abdul Latif Biswas</li><li>4. Mr. Abdus Sattar</li><li>5. Mr. Adeluddin Ahmed</li><li>6. The Honourable Mr. Akshay Kumar Das</li><li>7. Mr. Fazlur Rahman</li><li>8. The Honourable Mr. Hamidul Huq Choudhury</li><li>9. The Honourable Mr. Kamini Kumar Dutta</li><li>10. The Honourable Mr. Lutfar Rahman Khan</li><li>11. Syed Mahfuzal Huq</li><li>12. Mohd. Nurul Huq Chaudhry</li><li>13. Chaudhry Abdul Ghani Ghuman</li><li>14. Soofi Abdul Hamid Khan</li><li>15. Sardar Amir Azim Khan</li><li>16. Malik Amir Mahmood Khan</li><li>17. Chaudhri Aziz Din</li><li>18. Chaudhry Muhammad Hussain Chatha</li><li>19. Mian Mumtaz Muhammad Khan Daultana</li><li>20. Syed Mohyuddin Lal Badshah</li><li>21. Sardar Abdur Rashid Khan</li><li>22. Mian Jaffar Shah</li><li>23. Khan Mohammad Jalaluddin Khan</li><li>24. M. R. Kayani</li><li>25. Pir Ali Mohammad Rashdi</li><li>26. Ghulam Ali Khan Talpur</li><li>27. M. A. Khuhro</li><li>28. Siroomal Kirpaldas</li><li>29. Yusuf A. Haroon</li><li>30. Mirza Mumtaz Hassan Kizalbash</li><li>31. Major General M. A. H. Jahan Zeb</li><li>32. Malik Jehangir Khan Madda Khel Wazir</li><li>33. K. B. Haji Malik Mehrdil Khan Mahsud</li></ol>	<ol style="list-style-type: none"><li>1. Muhammad Abdul Khaleque</li><li>2. Abdur Rehman Khan</li><li>3. Moulana Abdur Rashid Tarkabagish</li><li>4. Abdul Mansur Ahmad</li><li>5. Ataur Rehman Khan</li><li>6. Basanta Kumar Das</li><li>7. Bhupendra Kumar Dutta</li><li>8. Canteswar Barman</li><li>9. A. H. Deldar Ahmad</li><li>10. Mahmud Ali</li><li>11. Moslem Ali Molla</li><li>12. Sheikh Mujibur Rahman</li><li>13. Muzaffar Ahmad</li><li>14. Nurur Rehman</li><li>15. Peter Paul Gomez</li><li>16. S. K. Sen</li><li>17. H. S. Suhrawardy</li><li>18. Zahiruddin</li></ol>
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**List XI: Clause 33 which gave the President the immunity regarding  
his election.**

Page 3288      20<sup>th</sup> Feb, 1956

Ayes

Noes

<ol style="list-style-type: none"> <li>1. Mr. Abdul Aleem</li> <li>2. The Honourable Mr. Abdul Latif Biswas</li> <li>3. Mr. Abdus Sattar</li> <li>4. Mr. Adeluddin Ahmed</li> <li>5. The Honourable Mr. Akshay Kumar Das</li> <li>6. A.K. Fazlul Huq</li> <li>7. Mr. Fazlur Rahman</li> <li>8. The Honourable Mr. Hamidul Huq Choudhury</li> <li>9. The Honourable Mr. Kamini Kumar Dutta</li> <li>10. The Honourable Mr. Lutfar Rahman Khan</li> <li>11. Syed Mahfuzal Huq</li> <li>12. Nurur Rehman</li> <li>13. Sardar Abdul Hameed Khan Dasti</li> <li>14. Soofi Abdul Hamid Khan</li> <li>15. Syed Abid Hussain Shah</li> <li>16. Sardar Amir Azim Khan</li> <li>17. Malik Amir Mahmood Khan</li> <li>18. Chaudhri Aziz Din</li> <li>19. Mir Balakh Sher Mazari</li> <li>20. C.E. Gibbon</li> <li>21. Khan Iftikhar Husain Khan of Mamdot</li> <li>22. Mohamad Ali</li> <li>23. Syed Mohyuddin Lal Badshah</li> <li>24. Sardar Abdur Rashid Khan</li> <li>25. Mian Jaffar Shah</li> <li>26. Khan Mohammad Jalaluddin Khan</li> <li>27. M. R. Kayani</li> <li>28. Pir Ali Mohammad Rashdi</li> <li>29. Ghulam Ali Khan Talpur</li> <li>30. M. A. Khuhro</li> <li>31. Siroomal Kirpaldas</li> <li>32. Dr. Khan Sahib</li> <li>33. Yusuf A. Haroon</li> <li>34. Mirza Mumtaz Hassan Kizalbash</li> <li>35. Nawab Mir Bai Khan</li> <li>36. Major General M. A. H. Jahan Zeb</li> <li>37. Malik Jehangir Khan Madda Khel Wazir</li> <li>38. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Ataur Rehman Khan</li> <li>6. Basanta Kumar Das</li> <li>7. Bhupendra Kumar Dutta</li> <li>8. Canteswar Barman</li> <li>9. A. H. Deldar Ahmad</li> <li>10. Mahmud Ali</li> <li>11. Moslem Ali Molla</li> <li>12. Sheikh Mujibur Rahman</li> <li>13. Muzaffar Ahmad</li> <li>14. Nurur Rehman</li> <li>15. Peter Paul Gomez</li> <li>16. H. S. Suhrawardy</li> <li>17. Zahiruddin</li> <li>18. Mian Abdus Salam</li> </ol>
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**List XII: Clause 1: relating to the name and territories of Pakistan. The opposition wanted to oppose this clause because of the objection on the name of the country being Islamic Republic of Pakistan.**

Page 3410 21st Feb, 1956

Ayes

Noes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Moulana Hafiz Athar Ali</li> <li>7. Farid Ahmad</li> <li>8. A.K. Fazlul Huq</li> <li>9. Fazlur Rahman</li> <li>10. Hamidul Huq Choudhury</li> <li>11. Lutfar Rahman Khan</li> <li>12. Syed Mahfuzal Huq</li> <li>13. Nurul Huq Choudhury</li> <li>14. Mian Abdul Bari</li> <li>15. Chaudhry Abdul Ghani Ghuman</li> <li>16. Sardar Abdul Hameed Khan Dasti</li> <li>17. Soofi Abdul Hamid Khan</li> <li>18. Syed Abid Hussain Shah</li> <li>19. Syed Alamdar Hussain Shah Gilani</li> <li>20. Sardar Amir Azam Khan</li> <li>21. Malik Amir Mahmood Khan</li> <li>22. Chaudhri Aziz Din</li> <li>23. Mir Balakh Sher Mazari</li> <li>24. Malik Muhammad Firoz Khan Noon</li> <li>25. I. I. Chundrigar</li> <li>26. Khan Iftikhar Husain Khan of Mamdot</li> <li>27. Mohamad Ali</li> <li>28. Chaudhry Muhammad Hussain Chatha</li> <li>29. Mian Mumtaz Muhammad Khan Daultana</li> <li>30. Syed Mohyuddin Lal Badshah</li> <li>31. Mushtaq Ahmad Gurmani</li> <li>32. Sardar Abdur Rashid Khan</li> <li>33. Mian Jaffar Shah</li> <li>34. Khan Mohammad Jalaluddin Khan</li> <li>35. M. R. Kayani</li> <li>36. Pir Ali Mohammad Rashdi</li> <li>37. Ghulam Ali Khan Talpur</li> <li>38. M. A. Khuhro</li> <li>39. Haji Moula Bakhsh Soomro</li> <li>40. Dr. Khan Sahib</li> <li>41. Yusuf A. Haroon</li> <li>42. Mian Abdus Salam</li> <li>43. Mirza Mumtaz Hassan Kizalbash</li> <li>44. Nawab Mir Bai Khan</li> <li>45. Major General M. A. H. Jahan Zeb</li> <li>46. Malik Jehangir Khan Madda Khel Wazir</li> <li>47. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Akshay Kumar Das</li> <li>6. Ataur Rehman Khan</li> <li>7. Basanta Kumar Das</li> <li>8. Bhupendra Kumar Dutta</li> <li>9. Canteswar Barman</li> <li>10. A. H. Deldar Ahmad</li> <li>11. Gour Chandra Bala</li> <li>12. Kamini Kumar Dutta</li> <li>13. Mahmud Ali</li> <li>14. Moslem Ali Molla</li> <li>15. Sheikh Mujibur Rahman</li> <li>16. Muzaffar Ahmad</li> <li>17. Nurur Rehman</li> <li>18. Peter Paul Gomez</li> <li>19. Rasa Raj Mandal</li> <li>20. S. K. Sen</li> <li>21. H. S. Suhrawardy</li> <li>22. Zahiruddin</li> </ol>
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**List XIII: Clause 32: the qualification of a member to become president. Along with other factors like being at least 40 years of age and eligible to be a member of National Assembly.**

Page 3430 , 21st Feb , 1956

Ayes

Noes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Moulana Hafiz Athar Ali</li> <li>7. Farid Ahmad</li> <li>8. Fazlur Rahman</li> <li>9. Lutfar Rahman Khan</li> <li>10. Syed Mahfuzal Huq</li> <li>11. Nurul Huq Choudhury</li> <li>12. Mian Abdul Bari</li> <li>13. Chaudhry Abdul Ghani Ghuman</li> <li>14. Sardar Abdul Hameed Khan Dasti</li> <li>15. Soofi Abdul Hamid Khan</li> <li>16. Syed Abid Hussain Shah</li> <li>17. Syed Alamdar Hussain Shah Gilani</li> <li>18. Sardar Amir Azam Khan</li> <li>19. Malik Amir Mahmood Khan</li> <li>20. Chaudhri Aziz Din</li> <li>21. Mir Balakh Sher Mazari</li> <li>22. Khan Iftikhar Husain Khan of Mamdot</li> <li>23. Mohamad Ali</li> <li>24. Chaudhry Muhammad Hussain Chatha</li> <li>25. Mian Mumtaz Muhammad Khan Daultana</li> <li>26. Syed Mohyuddin Lal Badshah</li> <li>27. Mushtaq Ahmad Gurmani</li> <li>28. Sardar Abdur Rashid Khan</li> <li>29. Mian Jaffar Shah</li> <li>30. Khan Mohammad Jalaluddin Khan</li> <li>31. M. R. Kayani</li> <li>32. Pir Ali Mohammad Rashdi</li> <li>33. Ghulam Ali Khan Talpur</li> <li>34. M. A. Khuhro</li> <li>35. Haji Moula Bakhsh Soomro</li> <li>36. Dr. Khan Sahib</li> <li>37. Yusuf A. Haroon</li> <li>38. Mian Abdus Salam</li> <li>39. Mirza Mumtaz Hassan Kizalbash</li> <li>40. Nawab Mir Bai Khan</li> <li>41. Major General M. A. H. Jahan Zeb</li> <li>42. Malik Jehangir Khan Madda Khel Wazir</li> <li>43. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Akshay Kumar Das</li> <li>6. Ataur Rehman Khan</li> <li>7. Basanta Kumar Das</li> <li>8. Bhupendra Kumar Dutta</li> <li>9. Canteswar Barman</li> <li>10. A. H. Deldar Ahmad</li> <li>11. Gour Chandra Bala</li> <li>12. Mahmud Ali</li> <li>13. Moslem Ali Molla</li> <li>14. Sheikh Mujibur Rahman</li> <li>15. Muzaffar Ahmad</li> <li>16. Nurur Rehman</li> <li>17. Peter Paul Gomez</li> <li>18. Rasa Raj Mandal</li> <li>19. S. K. Sen</li> <li>20. Zahiruddin</li> </ol>
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**List XIV: Clause 153 (available as article 145 in the final draft). This related to principles of electorates.**

Page 3468

21st Feb, 1956

Ayes

Noes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Akshay Kumar Das</li> <li>7. Moulana Hafiz Athar Ali</li> <li>8. Farid Ahmad</li> <li>9. Fazlur Rahman</li> <li>10. Hamidul Huq Choudhury</li> <li>11. Kamini Kumar Dutta</li> <li>12. Lutfar Rahman Khan</li> <li>13. Syed Mahfuzal Huq</li> <li>14. Nurul Huq Choudhury</li> <li>15. Mian Abdul Bari</li> <li>16. Chaudhry Abdul Ghani Ghuman</li> <li>17. Sardar Abdul Hameed Khan Dasti</li> <li>18. Soofi Abdul Hamid Khan</li> <li>19. Syed Abid Hussain Shah</li> <li>20. Syed Alamdar Hussain Shah Gilani</li> <li>21. Sardar Amir Azam Khan</li> <li>22. Malik Amir Mahmood Khan</li> <li>23. Chaudhri Aziz Din</li> <li>24. Mir Balakh Sher Mazari</li> <li>25. Khan Iftikhar Husain Khan of Mamdot</li> <li>26. Chaudhry Muhammad Hussain Chatha</li> <li>27. Mian Mumtaz Muhammad Khan Daultana</li> <li>28. Syed Mohyuddin Lal Badshah</li> <li>29. Mushtaq Ahmad Gurmani</li> <li>30. Sardar Abdur Rashid Khan</li> <li>31. Mian Jaffar Shah</li> <li>32. Khan Mohammad Jalaluddin Khan</li> <li>33. M. R. Kayani</li> <li>34. Pir Ali Mohammad Rashdi</li> <li>35. Ghulam Ali Khan Talpur</li> <li>36. M. A. Khuhro</li> <li>37. Haji Moula Bakhsh Soomro</li> <li>38. Siroomal Kirpaldas</li> <li>39. Dr. Khan Sahib</li> <li>40. Yusuf A. Haroon</li> <li>41. Mian Abdus Salam</li> <li>42. Mirza Mumtaz Hassan Kizalbash</li> <li>43. Nawab Mir Bai Khan</li> <li>44. Major General M. A. H. Jahan Zeb</li> <li>45. Malik Jehangir Khan Madda Khel Wazir</li> <li>46. Malik Waris Khan Malikdinkhel Afridi</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Abdur Rehman Khan</li> <li>3. Moulana Abdur Rashid Tarkabagish</li> <li>4. Abdul Mansur Ahmad</li> <li>5. Ataur Rehman Khan</li> <li>6. Basanta Kumar Das</li> <li>7. Bhupendra Kumar Dutta</li> <li>8. Canteswar Barman</li> <li>9. A. H. Deldar Ahmad</li> <li>10. Gour Chandra Bala</li> <li>11. Mahmud Ali</li> <li>12. Moslem Ali Molla</li> <li>13. Sheikh Mujibur Rahman</li> <li>14. Muzaffar Ahmad</li> <li>15. Nurur Rehman</li> <li>16. Peter Paul Gomez</li> <li>17. Rasa Raj Mandal</li> <li>18. S. K. Sen</li> <li>19. H. S. Suhrawardy</li> <li>20. Zahiruddin</li> </ol>
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**List XV: For the Constitutional Bill to be passed for a third reading the opposition demanded that a division is called for again.**

Page 3526

23rd February, 1956

Ayes

Noes

<ol style="list-style-type: none"> <li>1. Abdul Aleem</li> <li>2. Abdul Karim</li> <li>3. Abdul Latif Biswas</li> <li>4. Abdus Sattar</li> <li>5. Adeluddin Ahmed</li> <li>6. Akshay Kumar Das</li> <li>7. Farid Ahmad</li> <li>8. A.K. Fazlul Huq</li> <li>9. Fazlur Rahman</li> <li>10. Kamini Kumar Dutta</li> <li>11. Lutfar Rahman Khan</li> <li>12. Syed Mahfuzal Huq</li> <li>13. Nurul Huq Choudhury</li> <li>14. Chaudhry Abdul Ghani Ghuman</li> <li>15. Sardar Abdul Hameed Khan Dasti</li> <li>16. Sardar Amir Azam Khan</li> <li>17. Chaudhri Aziz Din</li> <li>18. Mir Balakh Sher Mazari</li> <li>19. C. E. Gibbon</li> <li>20. Chaudhry Muhammad Hussain Chatha</li> <li>21. Mushtaq Ahmad Gurmani</li> <li>22. Khan Mohammad Jalaluddin Khan</li> <li>23. M. R. Kayani</li> <li>24. Pir Ali Mohammad Rashdi</li> <li>25. Ghulam Ali Khan Talpur</li> <li>26. M. A. Khuhro</li> <li>27. Haji Moula Bakhsh Soomro</li> <li>28. Dr. Khan Sahib</li> <li>29. Nawab Mir Bai Khan</li> <li>30. Malik Jehangir Khan Madda Khel Wazir</li> <li>31. Malik Mehrdil Khan Muhsud</li> </ol>	<ol style="list-style-type: none"> <li>1. Muhammad Abdul Khaleque</li> <li>2. Moulana Abdur Rashid Tarkabagish</li> <li>3. Abdul Mansur Ahmad</li> <li>4. Ataur Rehman Khan</li> <li>5. Bhupendra Kumar Dutta</li> <li>6. Canteswar Barman</li> <li>7. A. H. Deldar Ahmad</li> <li>8. Gour Chandra Bala</li> <li>9. Mahmud Ali</li> <li>10. Sheikh Mujibur Rahman</li> <li>11. Muzaffar Ahmad</li> <li>12. Nurur Rehman</li> <li>13. Peter Paul Gomez</li> <li>14. S. K. Sen</li> <li>15. Zahiruddin</li> </ol>
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**List XVI: The Members who walked out of Final Reading**

29th Feb 1956,

Names of the members were HS Suhrwardy , Ataur Rehman, Sheikh Mujib ur Rehman, Zahiruddin, Abdur Rehman Khan, Abdul Khaleque, Maulana Abdur Rashid Tarkabagish, BK Das, BK Dutta, AK Das, Canteswar Barman, Mian Iftikhar ud Din, Mahmud Ali, Dr SK Sen, Rasa Raj Mandal, Gour Chandra Bala.